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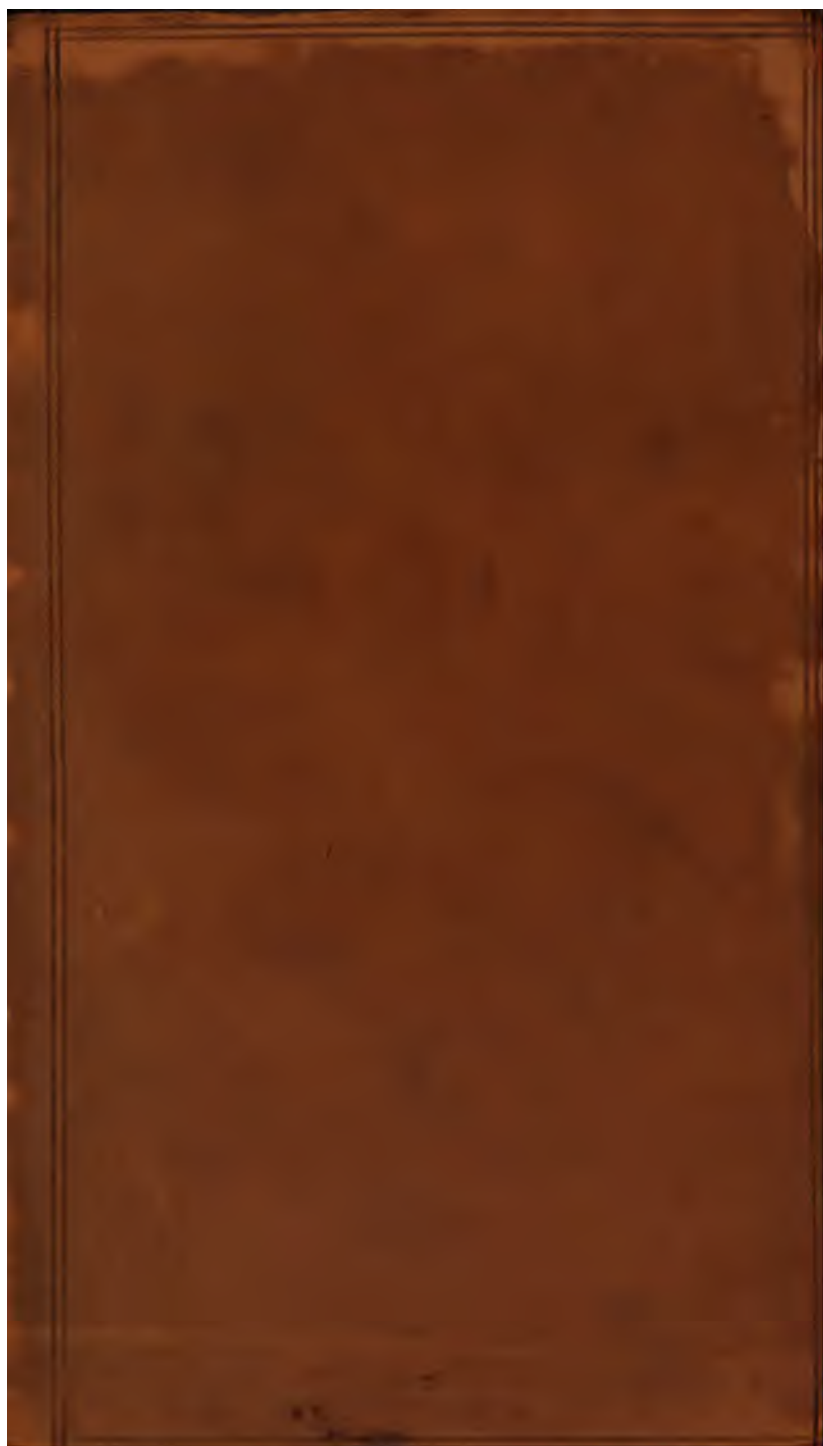
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THE  
**ATTORNEY'S NEW POCKET-BOOK,**  
**NOTARY'S MANUAL,**  
AND  
**CONVEYANCER'S ASSISTANT:**

CONTAINING PRECEDENTS OF  
ALL THE ORDINARY FORMS OF ASSURANCES, AND  
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WITH PRACTICAL INSTRUCTIONS FOR DRAWING DEEDS, WILLS, AND  
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ALSO,  
**NOTARIAL FORMS,**  
WITH AN ANALYSIS OF THE ACT, ENABLING ATTORNEYS AND PROCTORS  
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LIKEWISE,  
AN ABSTRACT OF THE RECENT REAL PROPERTY STATUTES, AND  
THE LATE ACT RELATING TO WILLS.

WITH NUMEROUS NOTES, CASES, &c.  
ADAPTED FOR THE OFFICES OF ATTORNEYS, SOLICITORS, NOTARIES, AND CONVEYANCERS,  
IN TOWN AND COUNTRY.

By RICHARD SHIPMAN, Esq.  
EDITOR OF "JONES'S ATTORNEY'S POCKET-BOOK."

*The Second Edition,*

REVISED, WITH CONSIDERABLE ALTERATIONS AND ADDITIONS.

By EWEN HENRY CAMERON, Esq.  
OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

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## PREFACE TO THE SECOND EDITION.

AFTER the favourable reception which this work has met with from the Public, the Editor of the present edition feels that some apology is due from him, for the many alterations and additions he has made in it—changes which he has perhaps been tempted to carry further than he otherwise might have done by that leisure which is common to the commencement of practice in the profession of which he is a member, as well as by the unlimited licence allowed him by the Publisher, to make any variations from the previous edition calculated to render the work more perspicuous and useful.

With that view, the Editor has ventured to omit several forms which appeared to him both imperfect, and of a character for which it was improbable that a work of this nature would be consulted, in order to make room for others of a more general practical utility.

With this exception, the Editor has few acts of omission to acknowledge; those of commission are much more numerous. The work will be found to contain upwards of 200 pages, for which he is solely responsible, in addition to which, he has been enabled, through the kindness of one of the Secretaries\* to the Poor Law

\* William Golden Lumley, Esq. of the Middle Temple.

Commissioners, to insert a chapter on Parish Property, and to the chapter on Notarial Forms very extensive additions have been made, for which the reader is indebted to the kindness of a gentleman thoroughly conversant with the law on that subject.

The Editor has thought, that the subject of Stamps and Marriage Settlements would be a valuable addition to the work, and has inserted chapters on those heads. He has also added many additional forms, and made such alterations in the language and arrangement in those previously given as they seemed to require.

In his emendations and additions to the former edition, the Editor has been guided chiefly by the desire to make the work useful to the practitioner in the preparation of those common assurances which occur in the ordinary course of a Solicitor's practice, and for which he may not think it necessary to have recourse to the aid of those whose sole attention is devoted to the subject of conveyancing; he has therefore not introduced any forms, used only in instruments of a complicated or difficult nature.

The Editor found the task of arranging and correcting the few notes and observations that were scattered over the work so difficult, that, after one or two fruitless attempts, he abandoned it altogether, and finding the labour of composition much more easy and agreeable to himself, and likely to be productive of what would prove more useful to the reader, he has been induced to adopt that course. For almost all the observations, therefore, on the different heads, (those on Purchase Deeds, p. 389, besides several foot notes scattered

throughout the work, and a few others of little importance only excepted,) the Editor must take upon himself the whole responsibility ; but it is due to himself at the same time to state, that though the greater portion of the matter so introduced by him is entirely new, he has anxiously studied to omit nothing that had found its way into the first edition, even though he may sometimes have been under the necessity of giving insertion to that which he felt to be out of place.

The several chapters which have been introduced on subjects not before noticed have in the latter pages of the work been distinguished by an asterisk, but as the propriety of so distinguishing the matter introduced into this edition from that contained in the original work, did not in the first instance occur to the Editor, he thinks it due to the Author to take this opportunity of stating, that, besides many other parts of the present edition which he has not thought it necessary more particularly to notice, his pen is solely responsible for the forms given under the heads of "Uses," "Trusts," and "Powers," pp. 50—72, for the whole of the Chapters on Answers in Chancery, the Protectorate, Marriage Settlements, Stamps, and Statutory Declarations, (Chapters 9, 31, 35, 36, 37,) the Observations on Perusing Deeds, and other introductory notes, comprising the first 16 pages, the Preliminary Observations on Abstracts of Title, (Chap. 3,) the Observations on Agreements for Purchase—Assignment of Choses in Action—Attorneys' Lien for their Costs—Taxation—Professional Communications, (p. 300—310,) Observations on Leases, (428,) Mortgages,



(p. 456)—Articles of Partnership—Powers of Attorney—Reconveyances—Releases—Surrenders—Warrants of Attorney—and on Wills.\*

In the Chapters on Conditions of Sale, Notices, and Wills, many additional forms have been inserted; a full abstract of the most important statutes which have passed since the publication of the first edition, including the early sections of the act for the abolition of imprisonment for debt, have been added to the chapter on Acts of Parliament.

Should any of the observations or suggestions which have been introduced into the present edition appear to be too simple and obvious, the Editor trusts that a desire to be of use to the Student, to whom few suggestions can be unacceptable on the ground of simplicity, will prove a sufficient apology.

The Editor hails with pleasure the conclusion of his labours, and confidently trusts that, imperfect as the work may still be, the result of them will be to render it more useful and acceptable to the Profession.

EWEN HENRY CAMERON,

LINCOLN'S-INN-FIELDS,  
*August 10, 1840.*

\* To any of his Readers to whom this enumeration may appear unnecessary or out of place, the Editor would observe, that it is made in accordance with what he understands to be the wish of the author, to whom he is anxious that none of the faults for which he alone is responsible should be imputed.

## PREFACE TO THE FIRST EDITION.\*

SEVERAL Attorney's Pocket-Books have been published, the utility of which has been proved by their speedy sale. But owing to the recent important alterations in various branches of the Law, the want of a new work of this description has been greatly felt; and it is with a view to meet this demand that the present volume is published. Few persons are aware of the labour and care requisite in preparing Precedents, in which almost every word is of serious consequence, and sometimes the slightest error productive of fatal results. This book has therefore been prepared and printed with the greatest attention, regardless of expense; and is offered with confidence to the Profession.

A small but legible type has been used, to render it a convenient pocket companion for the Attorney or Solicitor, whenever his services may be suddenly and unexpectedly required from home. With this view, as well as to furnish a book of general and constant practical service, the following plan has been adopted:

The distinct and different parts of Deeds and Instruments have been selected, followed by the insertion of

\* Published in 1837.

skeleton forms of the newest and most approved Precedents, arranged under separate heads, with instructions for filling up and completing the same according to the instrument required; thus reducing the size and expense of the work, and avoiding that constant repetition of the same form of words or parts of a deed, (so much complained of in the different published Precedents,) which, if inserted in each form here introduced, would have swollen the work to an inconvenient size.

The recent alterations in the law of Real Property, (before alluded to,) having rendered new forms necessary, such precedents only have been selected from the most approved drafts of eminent modern conveyancers, as are best adapted to, and more particularly required in, the ordinary routine of business; and to these practical notes and illustrations have been added.

The Notarial Forms were furnished by a gentleman of eminence, and inserted in consequence of the late act of the 4th Will. IV., c. 70, enabling attorneys residing at places distant more than ten miles from the Royal Exchange in the city of London, to be admitted to practise as Notaries.

An analysis of all the late Property Acts is included, and a full abstract of the late important statute, 1st Vict., c. 26, for the amendment of the law in respect to Wills.

# TABLE OF CONTENTS.

## CHAP. 1. OF A DEED.

1. General observations. Nature of a deed. Competent parties to, requisites to. Consideration. Where parties are blind or illiterate. Execution of by attorney. Delivery. Attestation. Attestation by attorneys. When deed void.
2. Of the different parts of a deed.
3. Observations on the preparation of deeds. Parties. Recitals. Description of parcels. Duties of purchaser's solicitor.
4. Perusing deeds. Proper covenants in deeds. Recitals in reconveyances, - - - - - Page 1-16

## 2. FORMS.

Parties in deeds, 17. Recitals, 18. Considerations, 36. Operative parts, 37. Parcels, 39. Exceptions, 41. Habendums, 45. Reddendums, 47. Uses, 50. Trusts, 54. Powers, 55. Provisoes, 72. Covenants, commencements of, 84. For title in purchase deeds, 85. In mortgage deeds, 97. In leases, 103. Attestations, 115.

## 3. ABSTRACTS OF TITLE.

Observations on, 117. Length of, 118. Form of, 120. Lease and release, 123. Settlement, 124. Will, 126. Codicil, 128. Court rolls, *ib.*

## 4. ACCOUNTS.

Undertaking to keep accounts, 131. Allowance of account, observations on, 132.

## 5. ACTIONS.

Retainer of an attorney to commence an action, 125. Ditto, to de-

of articles of clerkship, 296. Affidavit of the execution of articles of clerkship, 298. Observations on articles of clerkship, 299. Attorney and agent, 300. Attorneys' lien for their costs, *ib.* Taxation of attorney's bill, 304. Professional communications, 305.

#### 15. AWARDS.

An award by arbitration, 311. Ditto by an umpire, 313. Observations on awards, 314.

#### 16. BILLS OF SALE.

Bill of sale of goods, 316. Note on retaining possession of the goods.

#### 17. BONDS.

For securing a sum of money, 318. Ditto by instalments, 319. Condition in a bond to bankers, 320. Mortgage bond, 321. From purchaser of equity of redemption to indemnify mortgagor, *ib.* Annuity bond, 322. Post-obit, 323. Of arbitration, 324. Observations on arbitration bonds, 327. Bail bond, 328.

#### 18. COGNOVIT.

Cognovit, 332. Ditto in ejectment. Affidavit of the execution of.

#### 19. CONDITIONS OF SALE.

General conditions, 335. Ditto peculiar to leaseholds, 343. To copyholds, 346. For the sale of timber, 349.

#### 20. CONVEYANCES.

Lease and release, 352. Release from a vendor to a purchaser, 354. Appointment and release, 356. Feoffment, 358. Deed of gift, 360. Gift of furniture, *ib.* Grant of a reversion or remainder, 361. Grant of a pew, 362. Bargain and sale, (enrolled,) 364. An exchange, 365. By mortgagor and mortgagee, 368. By trustees for sale, 369. From devisees in trust and heir-at-law, 370. From tenant for life to remainder-man, 371. Release from remainder-man to the tenant for life, 372. From a man and his wife entitled to dower, 373. Conveyance and mortgage in one deed,

374. From a devisee, and the testator's widow, and a legatee of part of premises on which they had charges, the remainder being a sufficient security, 377. Surrender by a tenant for life, 380. Conveyance by assignees of a bankrupt, 381. Of an equity of redemption, 382. Disentailing deed, being a grant of a remainder with the consent of the protector, 384. Covenant to surrender copyholds, 386. Conveyance of leaseholds for lives, 388.

## 21. OBSERVATIONS ON PURCHASE DEEDS, 389.

## 22. DECLARATION OF TRUST.

By a person in whose name an estate was purchased, 392. By mortgagee, where the mortgage was made to one, but the money advanced by several persons, 393. By trustees advancing trust money on mortgage, 395. As to money secured by bond, 396.

## 23. DISTRESS FOR RENT.

Warrant to distrain. Inventory of goods distrained. Notices of distress. Appraiser's oath. Form of appraisement. Instructions for making distress. Observations on distress for rent, 398-402.

## 24. LEASES.

Of a house, 403. Under-lease of a house in London with fixtures, 407. Of premises in mortgage, 411. A concise form of a lease of a farm and lands, 415. A short lease of a piece of land from husband and wife, (the property of the wife,) 419. Short form of a lease of a house, 421. Conditions for the lease of a farm, *ib.* Observations on leases, 428.

## 25. MORTGAGES.

Mortgage in fee, 433. Of copyholds, 434. A concise mortgage with trusts for sale, 435. Assignment of a mortgage by the mortgagor and mortgagee, where a further sum is advanced, 437. Ditto, where no further sum is advanced, and the mortgagor is not a party, 439. Conversion of a mortgage for a term into a mortgage in fee, on a transfer, the term being assigned to attend the inheritance, 441. Of leaseholds for years, 443. Further charge, 445. Mortgage by a tenant in tail, with the consent of the protector, 446. By trustees of a term, with the concurrence of the tenant for life, 448. By appointment, 449. A short form of a mortgage with trusts for

sale, where the money is advanced for a limited time by two persons, 451. On personality, 454. Further charge, on premises mortgaged by appointment, 455. Observations on mortgages, 456.

## 26. NOTARIAL FORMS.

Certificates, 467. Letters of attorney, 471. Protests, 475. Shipping forms, 494. Charter-party. Conditions of a bottomry bond. Of a respondentia bond. Absolute bill of sale of a ship. Certificate of British registry, 505. Observations on the office of a notary-public, 508.

## 27. NOTICES.

In case of partnership, 513. To executors of assignment of a legacy, 514. Purchaser to vendor, that his money is producing no interest. To a mortgagee, by the purchaser of an equity of redemption. As to mortgages, 515. Of application to justices to recover possession of tenement under 1st and 2d Vic., c. 74, 517. Actions, *ib.* In cases of landlord and tenant, 518. Poor-rates, 522. As to repair of roads, 524.

## 28. PARISH PROPERTY.

Proceedings for obtaining the sale of parish property, and forms, 528. Forms of conditions of sale and conveyances, 539.

## 29. PARTNERSHIP, 546.

Forms, of agreement by a clerk with his master for carrying on the business. Between a trader and his retiring partner for the purchase of the lease of a house, stock, &c., 548. Articles of copartnership between solicitors, 550. Ditto between traders, 554. Applicable to all partnership articles, 557. Of admission of a partner, 563. Of dissolution of copartnership, 565. Observations on articles of partnership, 568.

## 30. POWERS OF ATTORNEY.

Forms of, 575. To prosecute an action in America. To distrain for rent, 579. To receive a legacy, 581. To take admittance of copyhold lands and to surrender, 582. To receive the distributive share of an intestate's estate, 584. To demand rent, and on default of payment to re-enter, 585. To vote in the choice of assignees, *ib.*

Affidavit of the execution of a power. Observations on powers of attorney, 587.

• 31. ON THE PROTECTORATE.

Observations on the title to the office. Table 1, showing the temporary provisions of the act of the 3d and 4th Will. IV. Table 2, showing its permanent provisions, 591.

32. RECEIPTS.

Forms of receipts, 597.

33. RECONVEYANCE.

Forms, from mortgagee to mortgagor, 599. From heir-at-law of a mortgagee, 601. From heir-at-law and executor of the mortgagee to devisees in trust for sale of the mortgagor, 602. Observations.

34. RELEASES.

General form of release, 609. Forms, of release of claims. Of legacies charged on lands and surrender of a term, 611. Of a right of way, 614. From creditors under a composition, 616. From creditors to a bankrupt, he paying a certain sum to the assignees for their benefit, 618. Of an equity of redemption to the mortgagee by indorsement on the mortgage deed, *ib.* To an executor and trustee under a will by the residuary legatee, 620. Observations on releases, 621.

• 35. SETTLEMENTS ON MARRIAGE.

Settlement of reversionary personal estate of the lady, and of a sum of stock of the gentleman, 628. Conveyance of a small real estate to trustees upon trusts for sale, and to stand possessed of the moneys upon trusts declared by the settlement, 640. A short settlement of real estates, 641. Form of trusts in a settlement for gentleman till bankruptcy or alienation, 643. Trust for renewal of leaseholds, and the payment of rent and performance of covenants, 644. Observations on marriage settlements, 646.



## • 36. STAMPS.

Agreements. Annuity. Appointment. Apprenticeship. Bond. Charter-party. Conveyance. Declaration of trust. Deed. Exchange. Feoffment. Lease. Letter of attorney. Memorial. Mortgages. Notarial acts. Partition. Protest. Release. Surrender. Warrants of attorney, 652. For stamps on settlements, see *Addenda*.

## • 37. STATUTORY DECLARATIONS.

5th and 6th Will. IV., c. 62. Form of declaration, 671.

## 38. SURRENDERS.

Surrender of a mortgage term. Ditto by indorsement. Observations on surrenders. Merger, 673.

## 39. WARRANTS OF ATTORNEY.

Forms. To secure money. An annuity in ejectment. Observations. Attestation of. Judgments on, Bankruptcy. Insolvency, 680.

## 40. WILLS.

Forms of bequests and devises. Attestation. Testamentary appointments. Wills of real and personal estate for wife and issue. Short will of personal estate. Codicil. Observations on wills. Execution. Revocation. Construction of. Abstract of Will Act, 692.

## TABLE OF CASES CITED.

Abel v. Heathcote	205	Beverley's Case	2
Adderley v. Dixon	289	Bill v. Kinaston	700
Alderson v. Pope	570	Blewitt, <i>Re</i>	593, 595
Alsop v. Ld. Oxford	305	Bolton v. Bp. of Carlisle	6
Amfield v. White	404	— Duke of, v. Williams	205
Anderson v. Sanderson	587	Bonbonus, <i>ex parte</i>	571
Angier v. Stannard	605, 608	Bond v. Hopkins	259
Ansell v. Evans	328	Bottomley v. Brook	288
Appleton v. Bincks	200	Bowden, <i>ex parte</i>	301
Arton v. Booth	623, 625	Bowen v. Kirwan	625
Ashton v. Ashton	694	Bowles v. Stewart	309
Astley v. Welden	218	Bradwell v. Catchpole	286, 441
Attorney General v. Newark	206	Brandon v. Robinson, 648, 649, 696	
		Bristow v. Taylor	588
Bailey v. Lloyd	622, 623	Bromley v. Holland	587
Baker v. Paine	626	Broughton v. Jewell	206
Balch v. Sykes	302	Brown v. Heathcote	13, 285
Ball v. Montgomery	6	— v. Lockhart, <i>Addenda</i>	
— v. Taylor	300	Browning v. Wright	14
Barber v. Fox	195	Bryant, <i>ex parte</i>	301
Barclay v. Raine	206	Buckle v. Mitchell	259
Barfoot v. Goodal	573	Bullock v. Dommitt	207, 405
Baring v. Dix	572	Burn v. Burn	571
Barry v. Nugent	216	Burnley v. Jennings	250
Batsford v. Kebell	715	Burrows v. Lock	287
Bawtree v. Watson	301	Butler v. Mulvihill	625
Baxter v. Lewis	343		
— v. Burfield	251	Campbell v. Campbell	204
Bayne v. Walker	405	Capper v. Harris	289
Beaumont v. Bramley	622, 625	Carleton v. Dorset	6
Bedford v. Deaken	567	Carr v. Eastbrook	589
Berkley v. Hardy	587, 588	Carvell v. Edwards	624
Bernal v. Mar. of Donegal	323	Chambers v. Goldwin	441
Berry v. Young	206	Champernowne v. Scott	300

Chandos, Duke of, v. Talbot	289	Dare v. Tucker	206
Cheetham v. Ward	626	Darwin v. Upton	364
Chipp v. Harris	687	Daubeny v. Cockburn	625
Cholmondley v. Clinton	137	Dean v. Newhall	623, 624
Church v. Brown	14, 16	Desborough v. Rawlins	310
Clarke v. Crofts	328	Devaynes v. Noble	133
Clarkson v. E. of Scarborough	432	Deverell v. Lord Bolton	200, 204
Clayton v. Burtenshaw	195, 216	Digby v. Atkinson	405
— v. Kinaston	623	Dillon v. Edwards	686
Clifford v. Beaumont	704	Dixon v. Robinson	667
— v. Wicks	364	Doe v. Ashburner	216
Clowes v. Higginson	203	— v. Beavan	430
Coates v. Hewitt	320	— v. Biggs	519
Cobb v. Stoker	520	— v. Bingham	5
Colegrave v. Manley	302	— v. Butler	519
Coles v. Jones	286	— v. Carter	430
— v. Trecothick	200	— v. Crick	518
Collins v. Collins	320	— v. Edwards	669
— v. Griffin	300	— v. Foster	519
Colman v. Sarrel	285	— v. Gray	668, 669
Colt v. Netterville	289	— v. Groves	212
Colville, <i>ex parte</i>	287	— v. Hazell	521
Cook v. Broomhead	137	— v. Hilder	258
Copeland v. Stevens	431	— v. Hogg	430
Coppin v. Coppin	597	— v. Howard	520
Cottrill v. Watkins	119	— v. Jones	357
Cowell v. Simpson	302	— v. Knight	115
Cox v. Cannon	686	— v. Laiming	406
Crawford v. Hamilton	572	— v. Lambley	519
Crawshay v. Collins	570, 572, 574	— v. Larder	666
Cresswell v. Byron	136	— v. Pickard	675, 677
Cripps v. Reade	458	— v. Porter	518
Cromwell v. Hyreon	587	— v. Roe	669
Crook v. Stephens	625	— v. Samuel	519
Crossfield v. Stanley	691	— v. Scott	521
Crouch v. Martin	285	— v. Smith	430
Crusoe v. Bugley	430	— v. Snaith	666
Cud v. Rutter	289	— v. Spence	520
Cumming v. Presscott	287	— v. Walker	677, 678
Curting v. Mar. of Townsend	323	— v. Watkins	520
Curtland v. Pounset	206	— v. Wombwell	519
Cuts v. Pickering	309	— v. Worsley	406
Cutting v. Derby	520	Doleret v. Rothschild	289
		Dolman v. Orchard	573
Dalby v. Pullen	204	Donnmett v. Bedford	696
Daniel v. Ubley	2	Donovan v. Fricker	133
Dann v. Spurrier	207	Dorrison v. Westbrook	289

## TABLE OF CASES CITED.

xix

Douglas v. Russell	285	Goodman v. Whitcomb	572
Drax v. Scroop	122, 304	Goodright v. Wright	713
Du Barre v. Lovett	309	Goodson v. Ellison	604
Dudley v. Robins	653	Goodtitle v. Jones	259
Dummer v. Pitcher	694	— v. Morgan	259
Dumper's Case	430	Gordon v. Gordon	625
Dunk v. Hunter	215	Goring v. Nash	218
Dutton v. Morrison	317	— v. Warner	430
		Goulding, <i>ex parte</i>	571
Edwards v. Harbon	317	Grace v. Smith	570
— v. Jones	285	Graham v. Hope	572
— v. M'Leay	204	Grane v. Mitchell, <i>Addenda</i>	
Elliot v. Davenport	693, 713, 714	Grant v. Yea	595
Elwin v. Elwin	715	Grave v. Sansom	305
Emmerson v. Blondell	587	Gray v. Cookson	250
		Greenlaw v. King	307
Fain v. Ayres	206	Greenough v. Gaskell	5, 308
Fane v. Spencer	205	Gregg v. Taylor	304
Farmer v. Rogers	676, 679	Grey v. Cockerell	303
Farr v. Pearce	574	Griffin v. Mathews	364
Farewell v. Cocker	303	Grove, <i>ex parte</i>	302
Farr's Case	6	Guppy v. Jennings	250
Featherstonhaugh v. Fenwick	574	Gutherie v. Armstrong	688, 9
Fildes v. Hooker	204	Gyles v. Hall	461
Fisk v. Fisk	602		
Flight v. Bentley	285, 430	Hadow v. Hadow	706
Foot v. Payne	309	Hall, <i>ex parte</i>	571
Fort v. Clarke	123, 204, 345	Halse v. Peters	666
Fox v. Hawbury	572	Hammerton v. Steed	216
Freakley v. Fox	626	Hardy v. Reeves	460, 666
Frontin v. Small	3, 200	Harrison v. Wright	218
Furlong v. Howard	300	Hawkshaw v. Parkins	623
Furnival v. Weston	623	Hazar v. Lane	305
		Heath v. Hall	285
Galway, Lord, v. Mathew	570, 571	Hegan v. Johnson	215, 216
Gardener v. Pullen	289	Henderson v. Hay	14, 16
Gardner v. Lachlan	286	Heslop v. Metcalf	302
Gardom, <i>ex parte</i>	623	Hesse v. Stevenson	86
Garforth v. Bradley	461	Higginbottom v. Holme	648
Garton v. Falker	402	Higgins v. M'Adam	690
Gaudye's Case	239	Hobson v. Trevor	218
Gausson v. Morton	587	Hoby v. Built	137
George v. Pritchard	205	Hodgkinson, <i>ex parte</i>	571
Georges v. Georges	302	Hodgson v. Anderson	587
Giles v. Hooper	404	— <i>ex parte</i>	648
Gillaume v. Adderley	694	Hollis v. Clarridge	300
Godfrey v. Wade	328	Honner v. Morton	289

Howard v. Hooker	6	Lord v. Wormleighton	30
Howell v. Edmonds	304	Loscomb v. Russell	57
— v. M'Iver	285, 288	Lucas v. Comerford	45
Hudson's Case	6	Lushington v. Waller	32
Hughes v. Robotham	258		
— v. Wynne	204	MacDougall v. Robertson	32
Hungerford v. Clay	429	Maddeford v. Austwick	204, 30
Hunter v. Welsh	131	Maddox v. White	
Hutchins v. Hutchins	137	Magrath v. Lord Muskerry	30
Hutton v. Eyre	623, 624	Mainwaring v. Gyles	36
		Maitland v. Adair	69
Ireson v. Pearman	122	Manby v. Scott	
Irving v. Viana	301	Manning v. Cox	62
Israel v. Benjamin	667	Manser's Case	
		Marks v. Marriott	32
Jackson and Wood, <i>Re</i>	300	Martin's Case	667
Jackson v. Sedgwick	570	Mason v. Kiddle	332, 687
Jacomb v. Halcomb	623	Massey v. Banner	135
James, <i>ex parte</i>	6	Master v. Miller	285
Jenkins v. Blizard	573	Mathews v. Wallwyn	437
Johnes v. Lloyd	134	Maundrell v. Maundrell	256
Jones v. Tripp	273	Mendes v. Mendes	236
— v. Jones	430	Merriwether v. Mellish	137
		Miles v. Williams	623
Kaye v. Waghorn	132	Milnes v. Gery	201
Keech v. Hale	429	Mitchell, <i>ex parte</i>	571
Kelsey's Case	1	— v. Neale	205
Kennedy v. Green	456	Mole v. Smith	259
Knebell v. White	574	Moody v. Spencer	302
Knight v. Chaplain	624	Moors v. Choat	431
		Moreton v. Lees	357
Lacy v. Kinaston	624	Morgan v. Bissell	216
Laing, <i>ex parte</i>	273	— v. Shaw	308
Lance v. Norman	6	Morris v. Mellin	689
Lane v. Cooper	1	Motley v. Buck	690
Latham v. Hide	303	Mould v. Roberts	136
Lawrence v. Potts	137	Mountford v. Scott	303
Leake v. Robinson	650	Murray v. East India Company	589
Lear v. Leggett	648, 696	— v. Stair	323
Legh v. Legh	625	Musselbrook v. Dunkin	314
Lepard v. Vernon	587		
Linley v. Clarkson	653	Naylor v. Winch	625, 626
Littler v. Holland	132	Neale v. Sheffield	625
Lloyd v. Griffiths	14	Nesbitt, <i>ex parte</i>	300, 301
— v. Rosbee	520	Newman, <i>Re</i>	595
Lolley v. Forbes	622, 624	Noel v. Weston	205
Lord v. Killett	135, 136	Norfolk v. Smith	304

## TABLE OF CASES CITED.

xxi

Norrish v. Marshall	439	Ray v. Pung	357
Norslock v. Buller	200	Reardon v. Swartz	670
Noyes v. Hopgood	132	Reaves v. Gill	205
Nutabrown v. Thornton	289	Reed v. Willmott	663
		Reeves v. Brymer	625
Ogilvie v. Foljambe	204	Rex v. Arnesley	251
Omerod v. Tate	301	— v. Atkins	523
Orme v. Pemberton	239	— v. Bailey	623
Owen v. Ord	136	— v. Derbyshire	526
Oxford, E., v. Rodney	15	— v. Eakring	251
		— v. Hindringham	1
Paddon v. Bartlett	668	— v. Margrave	250
Painter v. Linsel	456	— v. Peck	251
Palmer v. Neave	6	— v. Ripon	251
Parker v. Kett	588	— v. Smith	259
Parkhurst v. Lowton	306	— v. St Paul's, Bedford	654
Parkins v. Carruthers	573	— v. Toddington	238
— v. Hawkshaw	309	Richards v. Baker	701
Parsons v. Howard	627	— v. Davis	573
Passmore, <i>Re</i>	305	— Jackson	308
Peacock v. Peacock	570, 571	Rickards v. Barton	205
Pease v. Hirst	133, 139	Ridley v. Taylor	571
Pemberton, <i>ex parte</i>	301	Rigden v. Pearce	574
Phillippo v. Munnings	175	Robinson v. Driborough	195, 216
Phillpott v. Hoare	430	— v. Ward	133
Phipps v. Ingram	328	Robson v. Kemp	309
Pickett v. Loggon	14, 16, 626	Roe v. Dawson	13, 285
Figott's Case	5	— v. Rashleigh	589
Platt, Lady, v. Heap	679	Rogers v. Payne	625
Plenderleath v. Frazer	304	Rowson v. Earle	137
Poole v. Pass	462, 605, 608	Rowth v. Howell	183
Potter v. Hyatt	303	Rudge v. Birch	288
Prebble v. Boghurst	218	Ruffen, <i>ex parte</i>	572
Priddy v. Rose	14, 286		
Prideaux, <i>ex parte</i>	300	Salway v. Salway	133
Prosser v. Edmonds	285	Sanderson v. Marr	691
— v. Watts	203	Sandford v. Remington	5, 309, 310
Prussing v. Ing	667	Sansbury v. Read	715
Pulvertoft v. Pulvertoft	259	Sapsford v. Fletcher	404
Purdew v. Jackson	289	Sawyers v. Birchmore	305
Purvis v. Rayer	204	Say v. Barwick	625
Pym v. Blackburn	207	Saye and Sele, Lord, Case	5
		Sayer v. Bennett	572
Ramsbottom v. Gosden	626	Scholefield v. Heafield	144
Randall v. Harvey	588	Scott v. Tyler	701
Rann v. Hughes	2	Seaton v. Henson	6
Rawlinson v. Shaw	626	Sellers v. Bickford	625

Shack v. Anthony	286	Thompson v. Brown	6
Sharpnell v. Blake	461	Thorn v. Newman	6
Shaw v. Picton	133	Thornborough v. Baker	6
Shulter's Case	4	Thornton v. Adams	4
Shuttleworth v. Greaves	713	Thoroughgood's Case	
Sibthorp v. Moxom	693	Thorpe v. Thorpe	623, 6
Simpson v. Hartop	402	Thunder v. Belcher	4
Skeeles v. Shearly	357	Thurman's Case	
Skinner v. Sweet	301	Timmins v. Rawlinson	5
Slanning v. Style	700	Todd v. Gompertz	6
Sleech v. Thorington	694	Tooker's Case	57
Smedley v. Gooden	250	Toulmin v. Copeland	57
Smith, <i>ex parte</i>	432	Toussaint v. Hartop	32
— v. Birch	250	Townsend v. Windham	28
— v. Dickinson	218	Truman v. Hurst	13
— v. Mapleback	679	Tullet v. Armstrong	64
— v. Watson	196	Turton v. Benson	6, 1
Snaith v. Burridge	571		
Solley v. Forbes	625	Vallant v. Dodomead	30
Southampton, Lord, v. Mar. of		Vaux v. Henderson	71
Hertford	650	Vent v. Pacey	30
Southey v. Ld. Somerville	700	Vesey v. Dodd	68
Spencely v. Schulenburg	310	Vice v. Flemming	571
Stackpole v. Beaumont	704	Vickers v. Cowell	45
Staines v. Morris	15, 16	Vorden v. Parker	131
Steel v. Brown	317		
Stevenson v. Blakelock	300, 302	Waldron's Case	30
Stickney v. Sewell	466	Walker v. Perkins	3
Stiffe v. Everette	289, 648	Wallace v. Wellington	300
Stocks v. Booth	364	Walsh v. Whitcomb	287, 587
Stokes v. Russell	429	Ward v. Byrne	549
Street v. Rigby	218	Waters v. Taylor	572
Stuart, <i>ex parte</i>	206	Watson v. King	587
Sturges v. Corp	649	— v. Hayes	715
Swan v. Steele	571	— v. Mayne	402
Symons v. Symons	432	Weatherall v. Gee	403
		Webb v. Bethell	343
Tabernor v. Tabernor	135	— v. Dickson	207
Tabor v. Tabor	602	— v. Russell	429
Taunton v. Peplar	3	Welsh v. Hole	301, 302, 303
Taylor v. Foster	309	West v. Skip	571
— v. Homersham	622, 625	Wharton v. May	323
— v. Nicholl	687	Whitbread v. Gurney	307
— v. Popham	301	White v. Cuyler	3, 200, 587, 588
— v. Taylor	690	— v. Foljambe	204
Thetford's Case	625	— v. Sansome	259
Thomas v. Thomas	519	Whitfield v. Faussett	13, 285

## TABLE OF CASES CITED.

xxiii

Whitfield v. Brockett	696	Winch v. Keeley	288
— v. Pindar	432	— v. Walker	605
— v. Prickett	649	Windler v. Fearon	653
Wickens v. Townsend	301	Witley v. Cottle	289
Wilkes v. Back	3, 200	Wood, <i>Re</i>	593, 595
Wilkins v. Carmichael	301	Woodmeston v. Walker	649
— v. Fry	15, 261	Woods v. Huntingford	15
Wilkinson v. Colley	520	Woolley v. Jennings	133
— v. Stafford	286	Worrall v. Johnson	300
— v. Wilkinson	648	Wrekens v. Evans	653
Willasey v. Mashiter	305	Wren v. Kirton	133
Williams, <i>ex parte</i>	570, 572	Wrexham v. Huddleston	572
— v. Jones	570	Wright v. Bell	289
— v. Keats	573	— v. Castle	135, 136
— v. Pigott	273	— v. Derby	518, 521
— v. Sorrell	439, 463	— v. Wright	285
— v. Thorp	287	Wyatt v. Hodson	139
Wilshaw v. Smith	462	Wymer v. Kemble	690
Wilson v. Abbott	521		
— v. Metcalf	290	Yea, <i>Re</i>	595
— v. Hart	200		
— v. Rastall	306, 308	Zouch v. Parsons	2
— v. Wilson	135		



## TABLE OF STATUTES CITED.

27th Henry VIII.	c. 16,	<i>Uses</i> ,	353, 365
32d —————	c. 28,	<i>Leases</i> ,	420
5th Elizabeth,	c. 4,	<i>Apprentices</i> ,	250
43d —————	c. 2,	<i>Parish Property</i> ,	528
29th Car. II.	c. 3,	<i>Fraud</i> ,	138, 403
2d Will. and Mary,	c. 5,	<i>Distresses</i> ,	402
3d and 4th ———	c. 14,	<i>Payment of Debts</i> ,	143
4th Anne,	c. 5,	<i>Payment of Debts</i> ,	143
6th ———	c. 31,	<i>Landlord and Tenant</i> ,	405
10th ———	c. 18,	<i>Bargain and Sale</i> ,	365
12th ———	c. 2,	<i>Usury</i> ,	3
9th George I.	c. 7,	<i>Parish Property</i> ,	528
—————	c. 29,	<i>Copyholds</i> ,	582
2d George II.	c. 23,	<i>Attorneys' Bills</i> ,	304
4th ———	c. 28,	<i>Landlord and Tenant</i> ,	519
5th ———		<i>Colonies</i> ,	579
7th ———	c. 20,	<i>Mortgages</i> ,	462
11th ———	c. 19,	<i>Landlord and Tenant</i> ,	402, 432, 522
17th ———	c. 38,	<i>Poor Rate</i> ,	522
17th George III.	c. 26,	<i>Annuities</i> ,	2
—————	c. 53,	<i>Parsonage Houses</i> ,	670
32d ———	c. 57,	<i>Apprentices</i> ,	252
33d ———	c. 3,	<i>Acts of Parliament</i> ,	121
—————	c. 5,	<i>Land Tax</i> ,	404
39th and 40th —	c. 56,	<i>Entails</i> ,	163
41st ———	c. 23,	<i>Poor Rate</i> ,	523
—————	c. 78,	<i>Notaries</i> ,	509
42d ———	c. 116,	<i>Land Tax</i> ,	670
44th ———	c. 98,	<i>Notaries</i> ,	508

- 47th George III. c. 74, *Payment of Debts*, 143  
 55th ——— c. 184, *Stamps*, 240, 652  
 ——— c. 194, *Apothecaries*, 248  
 57th ——— c. 93, *Distresses*, 398  
 59th ——— c. 12, *Parish Property*, 528  
 1st and 2d George IV. c. 48, *Articled Clerks*, 299  
 ——— c. 55, *Stamps*, 652  
 3d ——— c. 16, *Attorneys*, 299  
 ——— c. 39, *Cognovits*, 333, 688, 691  
 ——— c. 117, *Stamps*, 652, 664, 667  
 5th ——— c. 41, *Stamps*, 652  
 6th ——— c. 16, *Bankrupts*, 4, 160, 300, 381, 618, 689  
 ——— c. 133, *Apothecaries*, 248  
 7th ——— c. 45, *Entails*, 163  
 9th ——— c. 14, *Frauds*, 139, 654  
 11th Geo. IV. and 1st Will. IV. c. 20, *Wills*, 182  
 ——— c. 47, *Debts*, 143  
 1st William IV. c. 7, *Cognovits*, 690  
 ——— c. 60, *Infant Trustees*, 2, 606  
 1st and 2d ——— c. 56, *Bankrupts*, 381  
 2d ——— c. 45, *Voting*, 431  
 2d and 3d ——— c. 71, *Prescription*, 177  
 ——— c. 80, *Church Lands*, 142  
 ——— c. 100, *Tithes*, 179  
 3d and 4th ——— c. 23, *Stamps*, 653  
 ——— c. 27, *Limitation of Actions*, 9, 169, 288, 464, 677  
 ——— c. 42, *Awards*, 328  
 ——— c. 74, *Fines and Recoveries*, 9, 150, 187, 447, 591  
 ——— c. 95, *Dower*, 150, 373, 389  
 ——— c. 104, *Simple Contract Debts*, 144  
 ——— c. 106, *Inheritance*, 167  
 4th ——— c. 22, *Apportionment of Rents, &c.*, 141, 432  
 ——— c. 70, *Notaries*, 510  
 4th and 5th ——— c. 23, *Infant Trustees*, 606  
 ——— c. 76, *Poor*, 526  
 5th and 6th ——— c. 62, *Oaths*, 671  
 ——— c. 69, *Parish Property*, 529  
 6th and 7th ——— c. 71, *Tithes*, 179  
 1st Victoria, c. 26, *Wills*, 180, 592, 699, 709, et seq.  
 ——— c. 28, *Limitation*, 170  
 ——— c. 50, *Parish Property*, 529  
 ——— c. 56, *Attorneys*, 299, 304  
 1st and 2d ——— c. 35, *Stamps*, 653  
 ——— c. 45, *Attorneys*, 304

- 1st and 2d Vic. c. 69, *Infant Trustees*, 606  
\_\_\_\_\_ c. 74, *Possession of Tenements*, 175  
\_\_\_\_\_ c. 85, *Stamps*, 653  
\_\_\_\_\_ c. 110, *Imprisonment for Debt*, 145, 168, 290, 332, 3  
377, 686, 689, 691  
2d \_\_\_\_\_ c. 11, *Judgments, &c.*, 168, 174, 689  
2d and 3d — c. 29, *Bankrupts*, 142  
\_\_\_\_\_ c. 54, *Custody of Infants*, 166  
\_\_\_\_\_ c. 60, *Infant Trustees*, 144

## ADDENDA ET CORRIGENDA.

Page line

- 9, 14, *for* 30th *read* 36th
- 21, 9, *dele* at the time
- 24, 20, *insert of before* interested
- 26, last line, *for* confirmed *read* comprised
- 49, 2, *dele* so
- 58, 7 from bottom, *for* non-appearance *read* non-application
- 59, 5 and 7, *after on insert* the
- 60, 6, *after part insert* thereof
- 71, 14, *for* interests *read* intents
- 78, 21, *dele the first* or
- 84, 17, *dele the second* and
- 85, 20, *for* related *read* released
- 97, 10 from bottom, *for* running *read* ensuing
- 114, margin, *for* lessor *read* lessee
- 115, 25, *for* in *read* between
- 123, 13, *for* on *read* of
- 145, The act of 1st and 2d Vic. c. 110, has been amended and explained by an act of 3d and 4th Vic. c. 82, which declares, that the rights given to creditors under the 14th sect. of that act, applies to the interest and dividends, as well as the capital of the stock, &c., and to funds in the Court of Chancery or Exchequer. It also provides that purchases, mortgages, and creditors, shall not be affected by unregistered judgments, &c., even though they may have had notice of them. See sec. 19 to 149.

- Page line  
 - 171, 7 section, *for* cestui on trust *read* cestui que trust  
 178, 3, *for* questions *read* question  
 — 18, *for* then *read* therein  
 179, 12, *for* payment *read* non-payment  
 180, 3 sec., *for* avoidable *read* available  
 191, 17, *for* or *for* *read* of  
 200, note *h*, *for* Fontin *read* Frontin  
 211, 14, *after* hereby *insert* agreed to be  
 219, 6, *before* inn *insert* an  
 — 8, *after* upon *insert* the  
 222, 3 from bottom, *after* W.S. *insert* unto him  
 228, last line, *dele* the first and  
 235, 18, *after* have *insert* and  
 237, 3 from bottom, *dele* said *before* premises  
 — note *q*, *for* should *read* shall  
 238, 14, *for* M.P. *read* P.D.  
 239, 13, *dele* and  
 241, 1, *after* mortgagor *insert* and mortgagee  
 254, last line, *for* interests *read* intents  
 259, 5 from bottom, *for* avoiding *read* avoid  
 277, 10, *for* into *read* in  
 278, 21, *after* compelling *insert* the payment or  
 280, 6, *for* said *read* same  
 283, 7, *before* will *insert* he  
 287, 19, *after* property *add* informing him of his intention of pur-  
     chasing, and *add* a reference to the case of *Ibbotson v.*  
     *Rhodes*, 2 Vern. 554.  
 288, 7 from bottom, *read* the case of bail-bond given to the sheriff  
     on an arrest on  
 289, note *c*, line 2, *for* 394 *read* 607  
 291, 6 from bottom, *for* purchaser *read* mortgagee  
 297, 8, *dele* in  
 302, note *e*, *after* Colegrave *insert* v. Mauley  
 309, note *n*, *read* Wigram  
 315, 11 from bottom, *after* red *insert* to me  
 327, 2 ————— *for* of *read* in  
 332, note *h*, *read* brought in debt  
 344, 2 from bottom, *for* premiums *read* premises  
 358, note *f*, line 1, *for* on *read* or  
 359, note *g*, line 17, *for* thereby *read* hereby  
 360, 17, *for* 32 *read* 52  
 371, lines 7 and 8, A. B. and C. D. ought to be parties of the first  
     and second parts, and the purchaser of the third.

- Page line
- 373, 4, *read aforesaid*
- note a, *for c. 105 read 95*
- 381, 1, *read receipt, &c.*
- 385, 7, *read as such protector*
- 411, 7, *for either read any*
- 429, 10, *instead of or read for*
- 431, 17, *read continues*
- 30, *for received read reserved*
- 432, 4, *for lessee read lessor*
- last line in first paragraph, *read charges*
- 457, line 1, *read of instead of the last from*
- 461, 14, *for is read shall be*
- On the subject of notice before the repayment of mortgage-money, see the recent case of *Brown v. Lockhart*, reported in 9 Law Jo. N.S. Ch. 167, in which the Vice-Chancellor said, that, "with regard to giving the mortgagee six months notice paying off the mortgage-money, I apprehend there is no law requiring that to be done, except that which has arisen out of the usual practice of conveyancers, it being reasonable to give the mortgagee the opportunity of finding another investment."
- 462, 463, see *Grane v. Mitchell*, recently decided by the Vice-Chancellor, in which case a motion for a reference of a foreclosure suit was opposed, on the ground that some of the mortgagors were infants; but the learned Judge, though he admitted that he could not make the order under the statute, granted the application under the authority of the general jurisdiction of the Court, 9 Law Jo. N.S. Ch. 171.
- 474, 12, *after witnesses insert whose names are*
- 475, 9, *for he read she*
- 483, 21, *for to read and*
- 489, 10 from bottom, *before to insert himself*
- 495, 4, *for right read tight*
- 497, 17, *dele the first agree*
- 8 from bottom, *read shall and will*
- 498, 17 from bottom, *dele of*
- 500, 18, *for and read end*
- 8 from bottom, *before given insert be*
- 502, 1, *for in read on*
- 505, 16 from bottom, *for registry read registering*
- 516, 23, *for into read unto*
- 521, 10, *dele witness*

- Page line
- 524, 7 from bottom, *read* highways
- 547, 10 from bottom, *insert* and *after* executors
- 557, 9, *read* shall and may
- 558, 2 from bottom, *after* out *read* of
- 559, 11, *for* into *read* in
- 582, note *q*, line 10 from bottom, *for* in *read* on
- 595, last line, *for* C. in fee, *read* E. in tail
- 604, note *w*, *read* 3 Russ.
- 613, 1, *dele* and
- 622, note *l*, *read* Beaumont *v.* Bramley
- 629, line 11, *after* of *insert* and in
- 669, *Stamps on Settlement*.—Any deed or instrument, (not being on a *bona fide* pecuniary consideration,) whereby any definite and certain principal sum or sums of money, (whether charged on, or to be laid out in lands or hereditaments or not, and if charged on hereditaments, whether to be raised at all events or not,) or any shares in Government, Bank of England, East India, or South Sea Stock, shall be, or be agreed to be settled, if such sum, or the value of such stock, or both, shall not amount to - - - L.1,000, L.1 15 0
- If the same
- |                                     |         |    |   |   |
|-------------------------------------|---------|----|---|---|
| shall amount to L.1,000, and not to | 2,000,  | 2  | 0 | 0 |
| _____ 2,000, _____                  | 3,000,  | 3  | 0 | 0 |
| _____ 3,000, _____                  | 4,000,  | 4  | 0 | 0 |
| _____ 4,000, _____                  | 5,000,  | 5  | 0 | 0 |
| _____ 5,000, _____                  | 7,000,  | 7  | 0 | 0 |
| _____ 7,000, _____                  | 9,000,  | 9  | 0 | 0 |
| _____ 9,000, _____                  | 12,000, | 12 | 0 | 0 |
| _____ 12,000, _____                 | 15,000, | 15 | 0 | 0 |
| _____ 15,000, _____                 | 20,000, | 20 | 0 | 0 |
| _____ 20,000, or upwards,           |         | 25 | 0 | 0 |
- Progressive duty, L.1, 5s.
- Duplicate, the same as the original.
- Exemptions.—Securities operating as settlements, if chargeable with the *ad valorem* duties on bonds or mortgages.
- Appointments under any power in favour of persons specially named as the objects of such power.
- Declarations of trusts pursuant to any previous settlement, deed, or will, and instruments for securing any gifts or dispositions made by any previous settlement, deed, or will.

ADDENDA ET CORRIGENDA.

xxxi

Page line

670, 7. *for so read is*

679, 20, *for on read to*

691, 4 from bottom, *read scire facias*

—note *m*, *read* 1 Nev. and M.

699, note *t*, *for* 82 *read* 182

704, note *xx*, *for* 700 *read* 701





## CHAPTER I.

### OF A DEED.

#### I.—GENERAL OBSERVATIONS.

A DEED is an instrument written or printed on parchment or paper, and sealed and delivered ; Co. Litt. 35, b, and 229, a.

To the validity of every deed, it is essential that there be a person able to contract ; and, in indentures, (which are deeds between two or more parties,) a person able to be contracted with : and each of these parties must be described by a sufficient name ; Co. Litt. 35, b ; Bac. Abr. Grant, c.

There must be words sufficient to convey the meaning of and bind the parties, but the deed may be in any language.

There are several classes of persons who are by law either partially or wholly incompetent to bind themselves by deed. Of these, first may be mentioned, infants, or persons under the age of 21 years, whose deeds are stated, by Littleton (259) and other writers of authority, to be voidable ; but this is by no means an invariable rule. It is decided by several authorities that an infant cannot avoid a lease or any other deed which is clearly for his benefit.<sup>a</sup> In illustration of this, it may be mentioned, that, though a lease with a very inadequate or no rent is absolutely void,<sup>b</sup> yet if such lease

<sup>a</sup> Kelsey's case, Cro. Jac. 320 ; Rex v. Hindringham, 6 T. R. 557 ; Maddox v. White, 2 T. R. 159.

<sup>b</sup> 1 Roll. Abr. 729 ; Lane v. Cooper, Moor, 105.

is made for the purpose of trying the infant's title, it will be supported :<sup>c</sup> so, though the bond of an infant is void,<sup>d</sup> yet, as it would be most disadvantageous to an infant if he could not contract for the necessities of life, a single bill (which is a bond without a condition) given for them is considered good ; 1 Lev. 86.

It was in this spirit that the 17 Geo. III. cap. 26, was passed, by which it was enacted, for the protection of infants, that all contracts with them for the purchase of annuities should be absolutely void.

On the other hand, the legislature have in some instances given validity to the acts of infants, as in the case of infant mortgagees or trustees, who are, under 1 Will. IV. cap. 60, empowered to convey their trust or mortgage estates under the authority of a court of equity.

The deeds of married women, unless in execution of a power, or under the provisions of some enabling statute, are absolutely void.<sup>e</sup>

The deeds of idiots and lunatics may also be avoided, either by the king after office found, or by their privies in blood or representation, namely, their heirs, or executors, or administrators, after their death ; but it appears that a lunatic in his lucid intervals will not be allowed to stultify himself in order to avoid his own deed.<sup>f</sup>

A deed is looked upon as an instrument of so high a nature, and made upon such mature deliberation, that at the common law it was not necessary, as in the case of parol contracts, that a consideration should be either stated or proved, in order to its validity ;<sup>g</sup> but there are now many very important exceptions to this rule ; for no conveyance under the statute of uses is valid without a consideration,—a bargain and sale requiring a valuable consideration, as money or

<sup>c</sup> Zouch v. Parsons, 3 Burr. 1806.

<sup>d</sup> Co. Litt. 172, a.

<sup>e</sup> Daniel v. Ubley, Latch, 41 ; Manby v. Scott, Sid. 120.

<sup>f</sup> Co. Litt. 247, a ; Beverley's case, 4 Rep. 123.

<sup>g</sup> Rann v. Hughes, 7 T. R. 350, n ; 3 Burr. 1671.

money's worth, and the consideration of blood or marriage, being equally necessary to the validity of a covenant to stand seised. And, by various statutes,<sup>a</sup> conveyances without a valuable consideration are declared to be fraudulent and void, as against creditors or purchasers for a valuable consideration; but, as it is beyond the scope of this work to enter into a detailed survey of their provisions, the reader is referred to Cruise Digest, vol. iv. tit. 32, and Fonbl. Equity, and the many valuable works which treat at length on this important subject. Where a consideration is stated, the validity of the deed depends on the legality of such consideration.<sup>1</sup> Thus, all deeds upon an usurious consideration are, by 12 Anne, cap. 2, sec. 16, declared to be absolutely void.

Sealing and delivery, as before stated, are essential to the validity of a deed; and, since the statute of frauds has made signing necessary to the conveying any interest in lands, that ceremony has also become universal, except in the cases of corporations aggregate, and ought never to be omitted, though it does not appear to have been directly decided by any case that a signature is necessary to all deeds.<sup>1</sup>

The execution of a deed may be either by the party himself, or by his attorney, appointed by deed, and, in the latter case, the attorney should not sign in his own name on behalf of his principal, as is sometimes erroneously done, but should sign the name of his principal, adding, by A. B., his attorney; for if he were to sign his own name only, his principal would not be bound.<sup>2</sup>

Before the deed is executed, it must be read if it is so wished by any of the parties, for if it is not read when desired, or read falsely, in the former case it

<sup>a</sup> 13 Eliz. cap. 5; 27 Eliz. cap. 4.

<sup>1</sup> Walker v. Perkins, 3 Burr. 1568; 1 Bl. Rep. 517.

<sup>2</sup> Taunton v. Peplar, 6 Mad. 166.

<sup>3</sup> White v. Cuyler, 6 T. R. 176; Frontin v. Small, 2 Raym. 1418; Wilkes v. Back, 2 East, 142.

will be void altogether,<sup>1</sup> and in the latter, as to such part as may be falsely read, unless it was misread by collusion, when it will be valid against the party guilty of the fraud; but if a party who can read a deed neglects to do so himself, he cannot afterwards avoid it; Shep. Touch. tit. 56.

A deed takes effect from its delivery, whatever may be its date, even though it should be an impossible one, as the 30th February, but still a date should never be omitted, and should, unless there is some good reason for the contrary, (as in the case of the bargain and sale for a year in a conveyance by lease and release,) be dated on that day on which it is first executed by any of the parties.

If, in cases where it is important that the date of the deed should be correctly set forth, an error in that particular should be discovered after it has become improper to correct it, on account of the deed having been then executed by any of the parties, or otherwise, it would be advisable for the witnesses to state in their attestation the date of its execution by that party whose signature they attest, or that some memorandum should be made of the real date.

Strictly speaking, attestation is not necessary to the validity of a deed, but it ought never to be omitted, for it very much increases the facility of proving it, and in a great measure prevents the grantor from denying his own deed, should it ever become his interest to do so. It must not here be forgotten, that the validity of most appointments under powers depends upon their being properly attested according to the directions of such powers.

By the 4th section of the bankrupt act, 6 Geo. IV. cap. 16, deeds of assignment by traders for the benefit of their creditors require the attestation of a solicitor or attorney.

The attestation should state every ceremony necessary to the validity of the deed, as signing, seal-

<sup>1</sup> Manser's case, 2 Rep. 3; Thoroughgood's case, 2 Rep. 9; Shulter's case, 12 Rep. 90; 2 Atk. 327.

ing, and delivery. This may sometimes be of great importance, as in the case of appointments. Any interlineations or erasures, which are not very trifling, should, for the sake of avoiding future questions, be noticed in the attestation as having been made before the execution.

It may not be altogether out of place here to call the attention of professional men to a practice very common amongst them, of being themselves the attesting witnesses to deeds affecting the interests of their own clients, a practice grown up, in all probability, from a very proper desire to have deeds attested by persons familiar with the requisites to their due execution. This practice is attended with the inconvenience, that when a solicitor is placed in the witness-box to prove the execution of a deed he has attested, he must disclose all the circumstances connected with the execution, however injurious they may be to his client, who thereby, to that extent, loses the privilege he would otherwise have had, of his solicitor being protected from discovering transactions that came to his knowledge in the character of his professional adviser.<sup>m</sup>

The several grounds upon which a deed is void *ab initio*, or voidable from defects existing at its execution, have been already stated. A deed may also be avoided by matter *ex post facto*, as by a disclaimer or disagreement, or on account of any interlineation, addition, or erasure,<sup>n</sup> made by any of the parties to it, but not if made by a mere stranger;<sup>o</sup> and in a modern case,<sup>p</sup> it was determined that some trifling alteration, and the filling up some blanks after the execution by some of the parties, leaves the deed *valid* as to the persons that had executed it, if

<sup>m</sup> Lord Saye and Sele's case, 10 Mod. 40; Sandford v. Remington, 2 Ves. 189; and Lord Brougham's Observations in Greenough v. Gaskell, 1 M. and K. 109.

<sup>n</sup> Pigot's case, 11 Rep. 26.

<sup>o</sup> 6 East, 309; 9 East, 351.

<sup>p</sup> Doe v. Bingham, 4 B. and Ald. 672.

the alteration has not affected the situation in which they stood. It need hardly be observed, that no person will be allowed to set up an erasure or alteration made in a deed by himself as a reason for avoiding such deed.

Cancelling a deed by destruction of the seals, or otherwise, will, unless it is the work of time or accident, render a deed void,<sup>a</sup> but not so far as to divest any estates previously vested by such deeds.<sup>†</sup>

Deeds obtained by fraud may be avoided either at law or in equity. The case above mentioned of a deed being misread is an instance of this.

It hardly comes within the compass of a work of this character to enter into all the many cases in which deeds are by statute, or the decisions of the several courts of law or equity, declared void or voidable for reasons of policy, but reference may be made to the case of deeds taken as rewards for procuring marriages, or appointments to offices of trust under government, purchases by trustees, assignees of bankrupts,<sup>‡</sup> or solicitors,<sup>§</sup> deeds before marriage in fraud of the marital,<sup>||</sup> or conjugal rights,<sup>¶</sup> and conveyances by the king's debtors, which are void as against the crown.<sup>\*\*</sup>

## II.—OF THE DIFFERENT PARTS OF A DEED.

There are certain words which the law has pointed out as the only proper vehicle for conveying cer-

<sup>a</sup> Touch. 70; *Seaton v. Henson*, 2 Show. 29.

<sup>†</sup> *Hudson's case*, Prec. in Chy. 235; *Bolton v. Bp. of Carlisle*, 2 H. Bl. 259.

<sup>‡</sup> *Ex parte James*, 8 Ves. 337.

<sup>§</sup> *Ibid.*

<sup>||</sup> *Lance v. Norman*, 2 Ch. Rep. 79; *Howard v. Hooker*, Id. 81.

<sup>¶</sup> *Carleton v. Dorset*, 2 Vern. 17; *Ball v. Montgomery*, 2 Ves. 194; *Turton v. Benson*, 1 P. Wms. 496; *Palmer v. Neave*, 11 Ves. 165.

<sup>\*\*</sup> *Favel's case*, *Dyer*, 160, a; 12 Rep. 3; but see 2 Vic. c. 11.

tain ideas. Thus a fee-simple cannot be granted without the word "heirs,"<sup>\*</sup> nor an estate tail without the words "heirs of the body;"<sup>7</sup> so the word "exchange" is essential in a deed of exchange,<sup>\*</sup> and a warranty of real property can be created by deed by no other expression than warrant;<sup>\*</sup> but with these few exceptions it may be laid down, that if a deed contains a clear statement of the party's meaning, it will be supported in whatever form that meaning is expressed; but as the forms of deeds at present in use have (to adopt the words of Mr Justice Blackstone) "been well considered, and settled by the wisdom of successive ages, it would be imprudent to depart from them without good reason or urgent necessity," a deed may now be considered as divided into the eight parts, which are mentioned in order below.

1. *The premises*, in which are found the names, additions, and titles of the parties. The recitals of such deeds, and other matters, as will explain the nature and object of the deed. The consideration on which the deed is founded. The grant, and the certainty of, or such description as points with certainty to, the grantor, grantee, and thing granted, and the exception of that part (if any) of the thing granted as is not intended to pass by such grant.<sup>b</sup>

2. The *habendum*, the object of which is to declare what estate or interest is granted, but which is often done in the premises, and in such case the habendum can only qualify the estate given in the premises, as by enlarging, lessening, or explaining it, for if it were repugnant, then it would be void, and the estate given in the premises take effect. Thus, if lands are given in the premises, to A. and his heirs, habendum to A. for life, the habendum would be void, and A. would take the fee;<sup>c</sup> but if the habendum had been to A. and the heirs of his body, then the habendum

<sup>\*</sup> Litt. 1.      <sup>7</sup> Co. Litt. 20, b.      <sup>\*</sup> Co. Litt. 51, b.

<sup>a</sup> Co. Litt. 334, a.

<sup>b</sup> Touch. 77.

<sup>c</sup> Co. Litt. 21, a, and 299, a; 8 Rep. 56, b, Plowd. 153.



would stand, and A. take only an estate tail.<sup>4</sup> In one case it has been held, that where the estates given by the premises and the habendum can consistently stand together, they shall do so, as in the case of a grant to A. and the heirs of his body, habendum to A. and his heirs, A. was held to take an estate tail with a remainder in fee.<sup>5</sup>

3. The tenendum, which formerly described the tenure by which the estate was to be holden, but since almost all tenures are reduced to free and common socage, the only relic of this part of a deed which custom has retained are the words "to hold."

4. The reddendum, by which some thing is reserved out of the thing granted, as ten shillings, a pepper-corn, or two days' ploughing, &c.; and with respect to such reservation, it must be remarked, that any thing newly created and reserved can be reserved to the grantor and his heirs only;<sup>6</sup> but if the reservation is of something previously issuing out of the land, then it may be reserved to the lord of the fee, or other person to whom such service or rent was previously payable. Thus a rent reserved on the grant of a lease being a new thing, must be made payable to the lessor and his heirs, or other persons entitled to the reversion after him, as a remainderman; whereas, on an assignment of a lease, in which rent was reserved, such rent should be made payable to the original lessor, or other person entitled to the reversion, though such person should be a stranger to the deed of assignment.<sup>7</sup>

5. The condition, which is a clause of contingency on the happening of which the estate granted may be defeated.

6. The warranty comes next in order. By it the grantor doth for himself and his heirs warrant and secure to the grantee the estate granted, which is a kind of covenant real to secure to the grantee and his heirs the enjoyment of the thing granted against

<sup>4</sup> Thurman's case, 2 Roll. Abr. 68.

<sup>5</sup> 8 Rep. 154, b; 1 Rep. 21, a.

<sup>6</sup> 8 Rep. 71.

<sup>7</sup> Co. Litt. 47, a; Sheph. T. 80.

all men. The books contain a great deal of learning on the subject of warranties, but it is not now one of much general importance, as, by two statutes passed in the 3d and 4th Will. IV. they were practically done away with, for by the 39th sec. of cap. 27, it was enacted that no warranty which might be made after December 31, 1833, should toll or defeat any right of entry or action for the recovery of land; and by the 14th sec. of the 74th cap., all warranties made after the same period by any tenant in tail were made absolutely void against the issue in tail, and all persons whose estates were to take effect after the determination, or in defeazance of the estate tail; and by the 30th sec. of the former act the writ of *warrantia charta* was swept away with many other obsolete ones, and, indeed, long before these statutes, covenants for title had entirely superseded the warranty.

7. The covenants by which a party stipulates for the truth of any fact or statement, as that he is seised in fee of the estate conveyed, or agrees to perform, or refrain from doing any act; of such a character are the usual covenants for payment of money in a mortgage, or for further assurance in a conveyance.

A covenant to refrain from performing a legal duty, or to do an illegal or immoral act, or any act impossible at the time of entering into the covenant, is void; but if the act does not become impossible till afterwards, the covenant will be supported.

8. The conclusion, in which the execution and date of the deed are mentioned or referred to.

### III.—OBSERVATIONS ON THE PREPARATION OF DEEDS.

As several statutes and powers require deeds executed under their authority to be by indenture, it is the safest plan to make use of that sort of deed in preference to deeds poll in all cases. An indenture, according to Coke's definition, Co. Litt. 229, a, is a

writing between two or more indented on the top or side. Indenting is necessary to make an indenture, but if a deed intended to be an indenture should be executed by mistake previous to its being indented, it is apprehended that the circumstance of its being indented afterwards would not affect its validity.

Of parties there are two distinct classes. The active, who convey or release some estate, right, or interest, enter into any covenant, acknowledge the truth of any statement, or consent to, or direct the execution of any other party; and the passive, as grantees, releasees, covenantees, &c. All of the former class should execute the deed, but except in the case of trustees, to remove all doubts as to their acceptance of the trusts, the execution by the passive parties is of no importance.

The order in which the parties are named is not very material, but there are certain rules, the adherence to which tends to the neatness and clearness of a deed; the parties, whether active or passive, should be placed according to the worthiness of the estate or interest conveyed or received by them. Thus, the party conveying the legal estate should stand before all the other active parties, and the person to whom such estate is conveyed before all the other passive parties; the freehold tenant should be placed before the chattel tenant; persons having estates before those having rights, and persons executing by the direction, or with the approbation of another, should be placed before the parties testifying their consent or approbation. If persons are parties to a deed in different characters, and act jointly with different persons, they may with propriety (but it is not necessary that they should) be named in different parts, according to their several characters. Joint tenants should be named as one party, but tenants in common, and others having separate interests, should be named in different parts. Where there is no difference in worthiness of estate, as trustees of different terms, there the order of time

in which they act will point out the order in which they should be named.

The object with which recitals are used in a deed is twofold; to explain the object of the deed, by stating the agreement or other inducement upon which it is founded, and to show the interest which the several parties have and intend to pass in the subject-matter of the deed, and this will in general point out how far it is proper to go back in reciting the state of the title; but under some circumstances the draftsman may with propriety trace the title to an earlier period than such rule would require, for the sake of keeping a connected record of the links of the title. Thus, though a recital of the ancestor's seisen would be sufficient to show the title of his heir, yet it would be desirable to recite the conveyance or other instrument under which the ancestor became entitled, and in assignments of terms where there have been but one or two previous transfers, the instrument creating, and each assignment of the term, should be recited; but if they have been numerous, then they may be shortly referred to, and recitals of the deed creating the term, and the last transfer, will be sufficient, introducing the latter by some few words of reference to the intermediate assignments. [See p. 32.]

All things necessary to be recited should, if possible, be introduced as distinct substantive recitals, and not as recitals within recitals; but this latter course is sometimes unavoidable, for parties to a conveyance, standing in the place of trustees or mortgagees, generally object to any thing being stated in any other way than as a recital of the contents of the conveyance to them, not choosing to pledge themselves to the truth of such facts. This observation cannot, of course, apply to facts that have occurred subsequent to the execution of such original conveyance.

It is difficult, if not impossible, to give any directions as to the selection of what facts or instruments,

or what parts of the latter, should be recited, it being from practice alone that this can be properly learnt ; but a slight consideration of the end for which an instrument is recited will best point out what part is material to recite. Thus, the appointment of executors is the only part of the will necessary to be noticed, where the statement of their title is the only object, as in an assignment by an executor of a term of which his testator was possessed. When a tenant for life is stating his title, the ulterior limitations are unimportant, and, unless very short, should not be noticed. In the two cases just mentioned, there are several other things which should be noticed, as necessary to perfect the title of the parties ; as, in the first instance, the death of the testator without having revoked his will, or the appointment of his executors, and the subsequent probate ; and, in the latter, the determination of any preceding estates, or the happening of any other event upon which the estate in question became vested.

It need scarcely be observed, that a party is said to be "seised" of freehold interests, but to be "possessed" of chattel interests.

The subject-matters of conveyances are either corporeal or incorporeal : land, and every thing thereon, as houses, mills, &c., which are said to lie in livery, the possession of them being capable of actual delivery, are of the former class ; whilst incorporeal are said to lie in grant, being incapable of such delivery, as advowsons, rents, rights of way, and other easements.

Where a deed comprises several properties held under different titles, the recitals as to each should be kept distinct from the other, and those relating to the larger property should stand first.

In assignments of terms of years, the parcels should be set out fully in the recital of the deed creating the term, and only referred to in the operative part ; but in other conveyances, especially if by lease and release, which should correspond as far as possible, the

parcels should be set out fully in the operative part, and not in the recitals, unless it is intended to add a modern description, when, for the sake of keeping up the identity, the old description may be either inserted in the recitals or in the operative part; if in the latter, it would be, perhaps, most correct to convey them first by the old description, introducing the new one afterwards by such words as the following:—"All which messuages, lands, hereditaments, and premises, are now better known by the names, quantities, and descriptions following. That is to say," &c. ; but the mode in which it is done is of no great importance, so that the identity is sufficiently shown.

On every purchase it is the duty of the purchaser's solicitor to procure a release of all the unsatisfied judgments, mortgages, and other charges on the property, and the merger of all equitable terms, and such legal terms as are not thought necessary to be assigned to attend the inheritance.

No property, of which a party is not seised or possessed, can be conveyed at law; for the assignment of a mere right would be but the transfer of litigation, which the law does not permit; therefore, though a *bona fide* purchaser for a valuable consideration of property assignable at law is safe, if he has a good legal title, whatever prior equitable rights there may be opposed to his, if he purchased without notice of such prior rights; yet as to the assignees of all choses in action, except bills of exchange, (which, for commercial reasons, are exempted from this rule of law,) the case is different; for, though assignable in equity,<sup>b</sup> they cannot be transferred at law,<sup>c</sup> and, consequently, the assignee takes them subject to all the equities to which they were liable in the hands

<sup>b</sup> *Roe v. Dawson*, 1 Ves. 332; *Whitfield v. Faussett*, id. 391; *Browne v. Heathcote*, 1 Atk. 160.

<sup>c</sup> 3 Lev. 312; 4 Mod. 48; 1 Inst. 266, a.

of the assignor,<sup>1</sup> and his situation is not improved by his having given a valuable consideration for the transfer. Hence it is unadvisable to purchase a chose in action, however low and tempting the terms, unless, from the character of the parties, the legality and fairness of the original contract is placed beyond a doubt.

#### PERUSING DEEDS.

Of almost equal importance with that of preparing deeds is the duty of perusing them previous to their execution, and as this duty, in many instances, devolves upon the solicitor, the editor has thought it not altogether out of place, in a work of this character, to insert a few observations respecting that duty, and to point out, as far as the decided cases have determined the points, what covenants and provisions vendors and purchasers have a right to demand the one from the other.

A purchaser of an estate in fee is entitled from his vendor, if beneficially interested, to the five common covenants, namely, that he is seised in fee—has good right to convey—for quiet enjoyment—that the estate is free from incumbrances, and for further assurance; but these covenants are qualified according to the title under which the vendor claims; thus: If the vendor was a purchaser for a valuable consideration, he can only be called upon to covenant as to his own acts; but if he claims under a voluntary conveyance, or by devise or descent,<sup>2</sup> his covenant must extend, in the first case, to the acts of the person last seised, and, in the two latter, to the acts of the deviser or immediate ancestor.<sup>3</sup>

<sup>1</sup> *Priddy v. Rose*, 3 Meriv. 107; *Turton v. Benson*, 1 P. Wms. 497.

<sup>2</sup> *Henderson v. Hay*, 3 Bro. C.C. 632.

<sup>3</sup> *Lloyd v. Griffiths*, 3 Atk. 264; *Church v. Brown*, 15 Ves. 263; *Browning v. Wright*, 2 Bos. and Pul. 22; *Pickett v. Loggon*, 14 Ves. 239.

When an estate is sold for the payment of the debts or legacies of the deceased owner, the question, as to whether the heirs or devisees are to covenant against the acts of their ancestor or deviser, as well as against their own, depends upon the circumstance of there being any considerable balance payable to them after satisfaction of the purposes for which the sale took place. A nominal balance, of course, would not render them liable to the more extended covenant, but what proportion would subject them to that liability does not appear to have been yet decided, and each case must therefore depend upon its own circumstances.

Purchasers of property subject to any charges must indemnify the vendor from all future liability in respect thereof, and enter into a covenant for that purpose. Thus, the purchaser of an equity of redemption must indemnify the vendor, whether the original mortgagor or his assignee, from the mortgage debt;<sup>m</sup> and the assignee of a lease must also indemnify his assignor against the rents and covenants reserved in the lease,<sup>n</sup> except in the single case of an assignment by assignees of a bankrupt, to whom such indemnity would be useless.<sup>o</sup> The vendors of other interests, as estates for life, a term, or for copyhold interests, must covenant that they are seised or possessed of the interest they convey—(a covenant that the lease is valid and subsisting, and that the rents, covenants, &c. have been paid and observed up to the date of assignment, being substituted for this covenant in the assignment of leaseholds)—and enter into other covenants, analogous to those required in conveyances of estates in fee.

In practice, however, the first mentioned covenant is, in small purchases, very often dispensed with,

<sup>m</sup> *Woods v. Huntingford*, 3 Ves. 131; *Earl of Oxford v. Lady Rodney*, 14 Ves. 417.

<sup>n</sup> *Staines v. Morris*, 1 Ves. and Bea. 8; *Wilkins v. Fry*, 1 Meriv. 265.

<sup>o</sup> *Wilkins v. Fry*.



the lawful seisen or possession being necessarily involved in the covenant, that the vendor has good right to convey, which, of course, he could not have without being entitled to the estate conveyed. It need scarcely be observed, that the right to these covenants may be affected by the agreement of the parties, and by the circumstances under which the sale took place; as, for instance, if a purchase was made at an under price in consequence of any defect in the title, the vendor would not be compellable to covenant against such defect.<sup>p</sup>

It should be noticed, that these observations, and the cases upon which they are supported, do not relate to the vendors who sustain the character of executors<sup>q</sup> or trustees, they being only compellable to covenant that they themselves have done no act to incumber.

A lessor is not entitled, in the absence of an agreement to that effect, to a covenant from the lessee, not to assign with or without licence.<sup>r</sup>

It has been before mentioned, that, in reconveyances by trustees or mortgagees, they cannot, in strictness, be compelled to pledge themselves to the correctness of any facts recited in the original conveyance to them, by stating them as substantive recitals; and, therefore, if it is wished that they should appear in the reconveyance, they must be set out as recitals within recitals; but where the parties are satisfied of the correctness of the facts, it would be rather a needless particularity to object to their insertion.

<sup>p</sup> *Pickett v. Loggon*, 14 Ves. 239.

<sup>q</sup> *Staines v. Morris*, 1 Ves. and Bea. 12.

<sup>r</sup> *Henderson v. Hay*, 3 Brown, C.C. 632; *Church v. Brown*, 15 Ves. 258.

## CHAPTER II.

### FORMS.

#### PARTIES IN DEEDS.

BETWEEN A. B., of the city of H., &c., gentleman, Common (or of the parish of W., in the county of S., grocer,) form. of the one part; and C. D., of the parish of H., in the county of M., yeoman, of the other part.

A. B., of, &c., esquire, and C. D., of, &c., the Eldest son. eldest son and heir-apparent of the said A. B., [*or* eldest son and heir of the said A. B. on the body of D., his late wife deceased,] of the first part; E. F., of, &c., merchant, of the second part; and G. H., J. K., and L. M., all of the city of W., gentlemen, of the third part.

A. B., of, &c., and E. his wife, the only daughter Sole daughter and heir. and heiress-at-law of L. M., late of, &c., deceased.

A. B., of, &c., and C. D., of, &c., joint executors, Joint executors. named and appointed in and by the last will and testament of, &c., deceased.

A. B., of, &c., only son and heir-at-law of S. P., Son and heir, and administratrix. of, &c., deceased, of the one part; and J. P., of, &c., widow, and administratrix of all and singular the goods, chattels, rights, and credits of the said S. P., deceased, of the second part; and R. S., of, &c., of the third part.

A. B., of, &c., administrator, with the will annexed, of S. D., late of, &c., deceased. Administrator with will annexed.

A. B., of, &c., and C. D., of, &c., the two surviving children of E. M., late of, &c., deceased. Surviving children.

Wife in exercise of a power.	E. F., wife of R. S., of, &c., esquire, heretofore
Parties to an endorsement.	E. L., spinster. The within named A. B., of the one part ; and E. F., of, &c., of the other part.
Widow and devisee.	E. F., of, &c., the widow, relict, and devisee named in the last will and testament of L. M., late of, &c., deceased.
Devisees and executors.	A. B., of, &c., and C. D., of, &c., devisees in trust and executors named in the last will and testament of T. I., late of, &c., deceased.
Rector.	A. B., rector of the rectory and parish church of, &c., [ <i>or vicar of, &amp;c.</i> ]
Baronet and wife.	Sir A. B., of, &c., baronet, and Dame E., his wife, sole daughter of Sir A. L., of, &c., knight, deceased.
A Lord.	The Right Honourable T. Lord A., baron of, &c.
An Earl.	The Right Honourable W. H., Earl of D.
Viscount.	The Honourable H. V., commonly called Lord Viscount B., the eldest son and heir-apparent of the said W. H., Earl of D., by the Right Honourable Countess of D., his late wife, deceased, before her marriage with him called Lady C. P.
A Duke.	The Most Noble H., Duke of N., &c.
An additional surname by the direction of a will.	C. H. T., of, &c., (lately called C. H., who hath assumed and now uses the additional surname of T.,) and the Hon. H. S., his wife, daughter and only child of the Right Honourable H. L., Lord Viscount T.

## RECITALS.

Act of parliament.	WHEREAS, by an act of parliament made and passed in the second year of the reign of her present majesty Queen Victoria, entitled "An act," &c., it was amongst other things enacted that, &c.
Action at law.	WHEREAS an action was commenced in her majesty's court of, [Q. B., ( <i>C. P.</i> ), <i>or Exchequer</i> ,] at Westminster, by the said A. B., for, &c., [ <i>or on, &amp;c.</i> ] [ <i>If by ejectment, say,</i> ] wherein John Doe (on the several demises of A. B. and C. D.) was plain-

tiff, and Richard Roe was defendant, for the recovery of, &c., in the county of, &c.

WHEREAS O. P., late of, &c., deceased, died on Administration. or about the 2d day of June last, intestate, leaving the said E. P., his, &c.; and letters of administration of all and singular the goods, chattels, rights, and credits of the said O. P., were on, &c., duly granted to the said, &c., by and out of the ecclesiastical court of, &c.

AND WHEREAS letters, &c., so far as relates to or Limited ad- concerns the said term of five hundred years, were ministration. on, &c., duly granted, &c.

AND WHEREAS letters of administration, with the Will annexed. will annexed of the said, &c., were on, &c.

WHEREAS, by certain articles of agreement in Agreement. writing, dated [*or bearing date*] the, &c., and made and entered into by or between, &c.

AND WHEREAS the said A. B. hath contracted and Agreement for purchase. agreed with the said C. D. for the absolute sale to him of the, &c., hereinafter described,\* and intended to be hereby released, with the appurtenances and the fee-simple and inheritance thereof in possession, free from incumbrances, (except, &c.,) at or for the price or sum of L. . [*If the consideration be a rent-charge, say,*] In consideration of the annual sum or yearly rent-charge of, &c., secured as hereinafter mentioned. [*If a remainder or reversion, say,*] Of the remainder or reversion in fee-simple expectant on the decease of, &c., of and in, &c. [*If the fixtures be comprised in the sale, say,*] And also all and every the fixtures and other things in and about the same messuages, &c., particularised in the inventory hereunder written. [*If part of the consideration-money is intended to be secured by a mortgage, say,*] And upon the treaty for the said purchase, it was agreed that the sum of L. , part of the said pur-

\* If leasehold, say, " comprised in the said recited indenture of lease, with the appurtenances for all the residue now to come and unexpired of the said term of ninety-nine years."

chase-money, should be secured to be paid to the said A. B., his executors, administrators, and assigns, with interest for the same, after the rate, at the times, and in manner hereinafter mentioned, by a mortgage of the same premises.

That mortgagee had agreed to discharge a part of the mortgaged premises from the mortgage.

WHEREAS, [*the mortgagee,*] being satisfied that the rest and residue of the hereditaments comprised in the said in part recited indenture of mortgage are an ample security for the principal and interest monies thereby secured, hath agreed to become a party to these presents, and to join and concur in the conveyance of the said premises, so contracted to be sold as aforesaid, unto the said, [*purchaser,*] his heirs and assigns, for the purpose of exonerating and discharging the same from the said mortgage incumbrance, and all claims and demands in respect thereof, but without prejudice nevertheless to his claim and demand on the rest and residue of the premises comprised in the said indenture of mortgage, for all the said principal and interest monies thereby secured.

Recital of appraisal of goods levied, and of defendant requesting sheriff to assign same to him, in part satisfaction of his damages.

WHEREAS the said effects have been duly appraised and valued by, &c., at the price or sum of £. , and the said A. B. hath agreed to take to the same in part satisfaction of his said damages, and hath requested the said late sheriff to assign the same to him, which he hath consented to do, upon the said A. B. indemnifying the said sheriff from all damages, costs, charges, and expenses, to be occasioned by such assignment.

Recital of an extent and inquisition.

WHEREAS, by virtue of her majesty's writ of extent on the said recognizance, directed to the sheriff of, &c., bearing date, &c., commanding him to inquire into and ascertain the value of all the lands and tenements in his bailiwick, whereof the said C. D. was seised at the time of entering into, &c., and the values being ascertained, to cause the same to be delivered to the said A. B., at a reasonable price and extent, to hold to him the said A. B. and his assigns, as his freehold, according to the form of the statute

in that case made and provided, until his said debt, together with his damages and costs, should be fully levied, as by reference to the said extent will more fully appear.

WHEREAS, by an inquisition, taken at, &c., on, Inquisition.  
&c., by virtue of her majesty's writ of extent, it was, amongst other things, found that the said C. D. was at the respective times of his entering into the said recognizance, and at the time of the taking the said inquisition, seised in fee of one messuage, &c., [*describe premises,*] of the clear yearly value of L. , above reprises, and also of, &c., [*premises,*] which said messuages, lands, and premises, the said sheriff, on the day of taking the said inquisition, caused to be delivered to the said A. B., under and by virtue of the said recited extent and inquisition, to hold the same unto the said A. B., as his freehold, according to the form of the statute in that case made and provided, until his said debt and damages, together with his costs and charges, should be fully levied, satisfied, and paid.

WHEREAS, upon an account this day stated between the said A. B. and C. D., it appears that the said A. B. is, and stands justly and truly indebted<sup>3</sup> unto the said C. D., upon the balance of the same account, in the sum of L. , which the said A. B. doth hereby acknowledge. Indebted upon an account stated.

WHEREAS, by a certain bond or obligation in writing, bearing date on or about, &c., A. B., of, &c., is become bound to C. D., of, &c., in the sum of L. , with a condition thereunder written for making void the same, upon payment by the said A. B., his heirs, executors, or administrators, to the said C. D. of the sum of L. , and interest, as therein mentioned. Bond from one obligor to one obligee.

AND WHEREAS the said A. B. hath agreed to advance and lend to the said C. D. the sum of L. , at interest, upon the bond or obligation of the said C. D., and upon mortgage or security of the hereditaments and premises hereinafter described, and in- Mortgage bond.

tended to be hereby released ; and in pursuance of the said agreement, the said C. D. hath executed and delivered to the said A. B. a bond or obligation in writing, bearing even date with these presents, and is thereby bound to the said A. B. in the sum of L. , with a condition thereunder written for making void the same, on payment by the said C. D., his heirs, executors, administrators, and assigns, unto the said A. B., his executors, administrators, and assigns, of the sum of L. , with interest for the same, after the rate, on the days or times, and in manner, in the condition written under the said bond or obligation, and hereinafter mentioned, for the payment of the same respectively.

A judgment.

WHEREAS, in or as of Hilary term, in the 1st year of the reign of our sovereign lady Queen Victoria, &c., the said A. B. obtained and recovered a judgment against the said C. D. for L. and costs of suit.

Several judgments.

WHEREAS the said A. B., deceased, in his lifetime obtained two several judgments in her majesty's court of Queen's Bench, at Westminster, in or as of Michaelmas term, in the year, &c., against C. D., one of such judgments being for the sum of L. , due to the said A. B., upon or by virtue of a certain bond or obligation, under the hand and seal of the said C. D., whereby he became bound to the said A. B. in the penal sum of L. , besides costs of suit, and the other of such judgments being for, &c., as by the records of the said court of Queen's Bench, reference being thereunto had, will more fully appear.

Writ of *levari facias* to the sheriff.

WHEREAS, by virtue of her majesty's writ of *levari facias*, directed to the said late sheriff, commanding him to cause to be levied of the goods and chattels of, &c., the sum of L. , which in the court of our said lady the queen, at Westminster, was awarded to the said, &c., for his damages which he had sustained, as well by virtue of not performing certain promises and undertakings made by the said, &c., to the said, &c., as for his costs and charges by him, about his suit, in that behalf expended, wherein the said, &c.,

was convicted, and to have that money, before our said lady the queen, at Westminster, on, &c., to render to the said, &c., for his damages, as by the said writ, reference being thereunto had, will more fully appear.

AND WHEREAS, by virtue of and in pursuance of the said writ, the sheriff aforesaid caused a warrant to be issued to one or more of his bailiffs, directing him or them to levy the sum of L. , besides costs of suit, of the goods and chattels of the said, &c. And the said bailiffs accordingly took possession of all and singular the household goods and effects in the schedule hereunto annexed, in and about, &c., belonging to the said defendants and others, situate, &c.

Issue of warrant by sheriff to bailiffs to levy, &c.

WHEREAS, by a policy of insurance, or instrument in writing, bearing date on or about the day of , under the hands and seals of A. B., C. D., and E. F., three of the directors of a certain insurance company, called the Insurance Company, in consideration of the sum of L. , then paid by the said A. B. to the said company, it was witnessed and declared, that if the said A. B. should pay to the trustees of the said company the like sum or premium, on or before the day of in every subsequent year, the stock and funds of the said insurance company should be subject and liable to pay unto the said A. B., his executors, administrators, or assigns, within three months after satisfactory proof of the demise of E. F. should have been duly certified to the trustees of the said company, the sum of L. , of lawful money of Great Britain; and the said policy is subject to the proviso and stipulations therein particularly expressed and contained.

Policy of insurance upon a life.

WHEREAS, by a certain instrument or policy of insurance, numbered , dated, &c., under the hands and seals of three of the directors of the Insurance Company, in consideration of an annual sum of L. , to be paid to the said company during the life of A. B., the payment of the sum of L. was assured

Another form.



unto the said C. D., his executors, administrators, or assigns, within three calendar months after the decease of the said A. B.

Possessed of  
lands for a  
term as ten-  
ants in com-  
mon.

WHEREAS, under and by virtue of an indenture of lease, dated on or about, &c., and made or expressed to be made between, &c., the said A. B. and C. D. do hold and enjoy the messuage or tenement herein-after described, (*together with divers other messuages, lands, and hereditaments of them the said A. B. and C. D.,*) *for the residue and remainder of a term of ninety-nine years, as tenants in common*, at, under, and subject to the yearly rent of L. , payable as therein mentioned, and to the covenants and agreements in the said indenture of lease mentioned and contained, on the part and behalf of the said A. B. and C. D., to be by them respectively performed and kept.

Possessed by  
virtue of an  
assignment.

WHEREAS the said A. B., by virtue of an indenture of assignment, bearing date on or about, &c., and made or expressed to be made between, &c., is possessed, interested in, or entitled unto the messuage, &c., for the residue of a certain term of sixty years therein, and which same premises were originally demised by an indenture of lease, dated, &c., and made between, &c., for the said term as therein mentioned, [*as the case may be,*] subject to the rents, covenants, and agreements, on the tenant, lessee, or assignee's part, to be paid, observed, and performed.

Warrant of  
attorney given  
with a bond.

WHEREAS the said A. B. hath, by a warrant of attorney, under his hand and seal, bearing also even date with these presents, authorised certain attorneys of her majesty's court of at Westminster, or either of them, or any other attorney of the same court, to appear for him, as of term last, term next, or any other subsequent term, and receive a declaration in an action of debt on the above bond, and to confess the same action, or otherwise to suffer judgment thereon, by default, to pass against him, to be entered on record for the said debt, with costs of suit, as by the said recited bond and warrant of attorney, reference, &c.

WHEREAS, by a certain warrant of attorney, bearing date, &c., under the hand and seal of the said A. B., he the said A. B. did desire, authorise, and empower certain attorneys therein named to appear, and receive a declaration for him the said A. B., in an action of debt, for the sum of L. , at the suit of the said C. D., and thereupon to confess the same action, or else to suffer judgment as therein mentioned, which said warrant of attorney was given for securing the said sum of L. .

Warrant of attorney.

WHEREAS the said A. B. is seised of, or well and sufficiently entitled to, the inheritance in fee-simple in possession (free from incumbrances) of and in the messuage and hereditaments hereinafter described, and intended to be hereby granted and released, or otherwise assured, with the appurtenances.

Seised in feu.

WHEREAS, under and by virtue of the last will and testament of, &c., bearing date on or about, &c., the said A. B. is seised to him and his heirs of an estate of inheritance in fee-simple in possession, free from incumbrances, of and in all, &c.

Seised of lands in fee-simple, by virtue of a will.

WHEREAS, under and by virtue of certain indentures of lease and release, dated respectively on or about, &c., the release being made or expressed to be made between, &c., the said A. B. is seised of, or well and sufficiently entitled to, an absolute estate of inheritance in fee-simple in possession, free from incumbrances, of one undivided moiety or half part of and in the, &c., hereinafter described, and intended to be hereby released and conveyed, or otherwise assured, with the appurtenances; and the said C. D. is entitled to an absolute estate of inheritance in fee-simple in possession, free from incumbrances of and in the other undivided moiety or half part of and in, &c.

Entitled to lands in undivided moieties.

WHEREAS, under and by virtue of certain indentures of lease and release, bearing date respectively on or about the and days of, &c., and made or expressed to be made between, &c., (being the settlement made in contemplation of the marriage then

Seised of lands in tail under a settlement.

intended, and which was afterwards duly had and solemnized between them, the said, &c.,) the said A. B. is seised to him and his heirs, of an estate in fee-tail in possession, of the messuages, &c., mentioned and intended to be hereby granted, released, and conveyed, or otherwise assured, with their rights, members, and appurtenances.

Will of real estate made prior to the 1 Vict.

WHEREAS, A. B., late of , (being seised or otherwise well entitled in fee-simple, in possession of or to the messuage and other hereditaments hereafter described and intended to be hereby—) did, in such manner as by law was required for rendering valid devises of real estates, duly make and publish his last will and testament in writing, bearing date on or about , and thereby gave and devised, &c., and the said testator appointed the said executors of his said will.

Will of personal estate or of real estate since 1 Vict.

WHEREAS, A. B., late of , duly made and published his last will and testament, bearing date on or about , and thereby gave and devised, &c., and the said testator appointed the said executors of his said will.

Will, death and probate, to show appointment of executors.

WHEREAS the said A. B. departed this life on or about the day of 1839, having first duly made and published his last will and testament in writing, bearing date on or about the day of , and thereby appointed the said C. D. and E. F. executors thereof, who, on or about the day of last, duly proved the same in the Court of .

Agreement for loan on mortgage.

WHEREAS the said having occasion for the sum of L. , hath applied to and prevailed upon the said to advance and lend him the same at interest, upon the security [of the bond or obligation of him the said and] of a conveyance in fee by way of mortgage, to be made to the said and his heirs, of the and other hereditaments comprised in the said before in part recited indentures, in manner hereinbefore mentioned, [or of a demise to him the said of the and other premises confirmed in the said recited indentures,

for a term of            years by way of mortgage, as hereinafter mentioned,] or [of a conveyance in fee by way of second mortgage, with such power of sale as hereinafter contained, to be made to the said and his heirs, of the said            and other hereditaments, subject to the said mortgage debt of L.            , and the interest thereof.]

WHEREAS, by a certain indenture of apprenticeship, bearing date on or about the, &c., and made or expressed to be made between A. B., son of C. B., of, &c., and the said C. B., of the one part; and D. F., of, &c., of the other part; it is witnessed, that the said A. B., by and with the consent and approbation of his father, the said C. B., did put, place, and bind himself apprentice to the said D. F., to be taught and instructed in the art, trade, or business of a saddler, which the said D. F. then used, and to serve the said D. F., as such apprentice, from thenceforth, for and during and unto the full end and term of seven years, from thence next ensuing, and fully to be complete and ended.

Indenture of  
apprentice-  
ship.

WHEREAS, by a certain indenture bearing date on or about, &c., and made between, &c., the said A. B., for the considerations therein mentioned, did grant, bargain, and sell unto the said C. D., his executors, administrators, and assigns, all and singular the goods, chattels, and effects mentioned and particularised in the schedule thereunder written, [or annexed,] to hold the same unto the said C. D., his executors, administrators, and assigns, upon trust, &c., [state the trust, as in deed.]

Assignment of  
goods.

AND WHEREAS the said messuages, &c., hereinafter particularly mentioned and described, and intended to be hereby, &c., with the appurtenances, were on, &c., put up to sale by public auction in, &c., and the said C. D. was declared to be the highest bidder for, and became the purchaser of, the said, &c., at or for the price or sum of L.            . [If the premises were not sold, but afterwards disposed of by private contract, say,] And at such auction or sale the said,

Sale by auc-  
tion.

&c., was not then sold and disposed of, but the said A. B. afterwards, by private contract, agreed with the said C. D. for the sale thereof, and the said A. B. agreed to become the purchaser of the said, &c., hereinafter granted and released, at or for the price or sum of L. . [*If a deposit was paid, say,*]\* And whereas the said A. B. then advanced and paid into the hands of C. D. the sum of L. , as and for a deposit, and in part payment of his purchase-money. [*If deposit was made at the public sale, say,*] According to the printed conditions then and there produced, which he the said C. D. doth hereby acknowledge.

Assignment of  
a lease.

WHEREAS, by indenture, bearing date on or about, &c., and made, or expressed to be made, between, &c., IT IS WITNESSED, that for the considerations therein mentioned, the said A. B. did assign and set over unto the said C. D., his executors, administrators, and assigns, all that the said messuage, &c., mentioned and described in the said recited indenture of lease, and mentioned to be thereby demised to the said A. B., as aforesaid, with the appurtenances, together with the same indenture of lease, to hold the same unto the said C. D., his executors, administrators, and assigns, for and during all the rest, residue, and remainder of the said term of ninety-nine years [if the said E. F. and G. H., or either of them, should so long live] then to come, and unexpired, at, under, and subject to such yearly rents, covenants, and agreements, in the said recited indenture of demise or lease contained, as on the lessee's or assignee's part and behalf is, are, or ought to be observed, paid, and performed.

Covenant for  
the produc-  
tion of title-  
deeds.

AND WHEREAS the several deeds, evidences, and writings specified in the schedule hereunder written, or hereunto annexed, relate as well to the heredita-

\* The better mode is considered to be, not to notice the payment of the deposit, but to take a receipt in the conveyance for the whole purchase-money.

ments comprised in the said recited indenture of, &c., as to other property of greater value belonging to the said A. B. ; and upon the treaty for the said purchase, it was agreed that the said deeds, evidences, and writings, should remain in the custody and possession of the said A. B. upon his entering into such covenant for the production thereof as hereinafter contained. [*If the deeds are to remain in the hands of a third person, say,*] AND WHEREAS it hath been agreed that the deeds, &c., shall remain in the possession of the said A. B., upon his entering into such covenant for the production and delivering copies thereof as hereinafter is contained.

WHEREAS the said A. B. now is, and stands justly and truly indebted to the several persons whose names are hereunto subscribed, and seals set and affixed, in the several sums of money set opposite to their respective names in the schedule hereunder written. And the said A. B., by reason of divers losses and other unforeseen occurrences, having become incapable to satisfy and pay to his said creditors the full amount of their several debts and demands against him, hath applied to and requested them to accept and take an assignment of all his the said A. B.'s real and personal estate, of what nature or kind soever the same may consist of, in full satisfaction and discharge of each and every their respective debts and demands now due to each of them, from him the said C. B., at the time of the execution of these presents ; which they the said several creditors have consented and agreed to do, upon having the same conveyed to the said [*trustees,*] upon and for the trusts, intents, and purposes hereinafter expressed, and declared of and concerning the same.

Indebted to  
creditors,  
inability to  
pay, and  
agreement for  
assignment  
for benefit of  
creditors.

AND WHEREAS certain indentures of lease and release, bearing date respectively the fourth and fifth days of, &c., were made, or expressed to be made, between A. B., of, &c., of the one part ; and C. D., of, &c., of the other part ; and by the said indenture of release it is WITNESSED, that in consideration of the

Mortgage in  
fee.

sum of L. , paid by the said C. D. to the said A. B., he the said A. B. did grant and release unto the said C. D., his heirs and assigns, all and singular the pieces or parcels of land, hereditaments, and premises hereinafter described, and intended to be hereby released, To HOLD the same unto, *and to the use of* the said C. D., his heirs and assigns for ever ; *subject nevertheless* to a proviso therein contained, for redemption of the same premises, on payment by the said A. B., his heirs, executors, administrators, or assigns, unto the said C. D., his executors, administrators, or assigns, of the sum of L. , and interest, as therein mentioned.

Mortgage by  
demise.

WHEREAS, by an indenture, bearing date on or about, &c., and made, or expressed to be made, between, &c., *it is witnessed*, that in consideration of the sum of L. to the said A. B. paid by the said C. D., he the said A. B. did grant and demise unto the said C. D., his executors, administrators, and assigns, all, &c., to hold unto the said C. D., his executors, administrators, and assigns, for the term of 500 years from thence next ensuing, subject to a proviso therein contained, for the redemption of the said and premises, (*or for making void the same term,*) on payment by the said A. B., his heirs, executors, administrators, or assigns, unto the said C. D., his executors, administrators, or assigns, of the said sum of L. , and interest, as therein mentioned.

Another  
form.

WHEREAS, by virtue of an indenture, dated, &c., and made, &c., the, &c., were demised unto the said C. D., his executors, administrators, and assigns, for the term of 1000 years, but by way of mortgage only, to secure unto the said E. F. the therein mentioned principal sum of L. , and interest, which hath been long since paid off and satisfied.

Assignment  
of a mortgage.

WHEREAS, by a certain other indenture, bearing date, &c., and made, or expressed to be made, between the said C. D., of the first part ; the said A. B., of the second part ; and E. F., of, &c., of the

third part; after reciting as or to the effect hereinbefore recited, It is witnessed, that in consideration of the sum of L. , to the said C. D., by the direction of the said A. B., paid by the said E. F., in full for all money then due to the said C. D., upon his said security, he the said C. D., by the direction of the said A. B., did bargain, sell, and assign, and the said A. B., in consideration of the sum of 5s. to him paid by the said C. D., did grant, ratify, and confirm unto the said E. F., his executors, administrators, and assigns, all and every the said messuage or tenement, lands, and premises hereinbefore mentioned, and all and singular other the premises, in and by the said indenture of, &c., granted and demised, as aforesaid, with the appurtenances, To HOLD the same unto the said E. F., his executors, administrators, and assigns, for the then residue of the said term of 500 years, subject to a proviso therein contained, for redemption of the same premises, upon payment by the said A. B., his heirs or assigns, unto the said E. F., his executors, administrators, or assigns, of the sum of L. and interest, as therein mentioned, which was not paid accordingly.

WHEREAS, by an indenture, dated on or about, &c., and made, or expressed to be made, between, &c., It is witnessed, that in consideration of L. Assignment of leasehold premises, by way of mortgage. paid by the said C. D. to the said A. B., he the said A. B. did assign, transfer, and set over unto the said C. D., his executors, administrators, and assigns, all and singular the messuage, tenement, or dwelling-house, hereditaments, and premises comprised in the hereinbefore recited indenture of lease, with their appurtenances, To HOLD the same unto the said C. D., his executors, administrators, and assigns, for and during the rest, residue, and remainder of the said term of ninety-nine years therein, subject to a proviso therein contained, for redemption of the same premises, on payment by the said A. B., his executors, administrators, and assigns, unto the said



C. D., his executors, administrators, and assigns, of the said sum of L.                      and interest, in manner therein mentioned.

That by divers mesne assignments certain premises were assigned, &c.

WHEREAS, under and by virtue of divers mesne assignments and assurances, and other acts in the law, and ultimately by a certain indenture of assignment, bearing date on or about the      day of, &c., and made, or expressed to be made, between, &c., the said messuages or tenements, erections, buildings, and other the premises comprised in and mentioned to be demised by the said recited indenture of lease, of the      day of, &c., were assigned to, and are now vested in, the said A. B., for the residue of the said term of ninety-nine years, [subject to the rents, covenants, and agreements, on the tenant's, lessee's, or assignee's part and behalf, to be paid, observed, and performed, for or in respect of the same premises.]

Feoffment.

WHEREAS, by an indenture, bearing date on or about, &c., and made, or expressed to be made, between A. B., of, &c., of the one part; and C. D., of, &c., of the other part, IN CONSIDERATION of the sum of L.      , paid by the said C. D. to the said A. B., he the said A. B. did grant and enfeof to the said C. D., his heirs and assigns, ALL and singular the messuage or tenement, hereditaments, and premises hereinafter described, and intended to be hereby granted and enfeofed, TO HOLD THE SAME unto and to the use of the said C. D., his heirs and assigns, for ever.

Lease and release.

WHEREAS, by certain indentures of lease and release, bearing date respectively on or about the      and      days of      , the release being made, or expressed to be made, between A. B., &c.; FOR THE CONSIDERATIONS therein mentioned, THE PIECE OR PARCEL of land and hereditaments hereinafter described and mentioned, and intended to be hereby granted and released, (*together with divers other lands and hereditaments,*) were limited and appointed, granted, released, and conveyed, or otherwise

assured, to the<sup>d</sup> use of A. B., his heirs and assigns, for ever.

WHEREAS the said A. B. hath, by his licence or consent in writing, under his hand, dated the day of, &c., authorised the said C. D. to assign the said premises unto the said, &c., in the manner hereinafter expressed. Licence to assign lease.

WHEREAS the said A. B., by a certain instrument in writing, or letter of attorney, dated on or about, &c., hath made, nominated, constituted, and appointed the said C. D. his lawful attorney, to demand, &c. Letter of attorney.

WHEREAS, by an indenture of lease, bearing date on or about the, &c., and made, or expressed to be made, between the mayor, commonalty, and citizens of the city of London, of the one part; and the said E. F., of the other part; the said mayor, commonalty, and citizens, did demise unto the said E. F. all, &c., as the same are therein and hereinafter particularly described, with the appurtenances, To HOLD the same (freed and discharged of land-tax, which had been redeemed) unto the said E. F., his executors, administrators, and assigns, from for and during the term of years then next ensuing, subject to the yearly rent of L. payable to the said mayor, commonalty, and citizens, their successors or assigns, at or in the office of receipts and payments of money of the chamberlain of the said city for the time being, by quarterly payments, without any deduction, and also subject to the several covenants and agreements therein contained on the part of the lessee, his executors, administrators, and assigns, to be done and performed. Lease from mayor, &c. of London.

WHEREAS, by an indenture of lease, bearing date, &c., and made, or expressed to be made, between, &c., for the considerations therein mentioned, the said A. B. did demise and grant unto the said C. D., his executors, administrators, and assigns, all, &c., to hold the same, from the day of the date thereof, for and during the term of ninety-nine years, if the said Lease, with covenant for renewal.

E. F. and G. H., of, &c., and K. L., &c., should so long live, at and under the yearly rent of L. , payable as therein mentioned: and in the said indenture of lease, now in recital, is contained a covenant on the part of the said A. B., for the renewal thereof on the death of either of the said E. F. and G. H.

Release  
grounded  
upon a lease  
for a year.

WHEREAS, by an indenture of release and assignment, bearing date on or about, &c., and made, or expressed to be made, between, &c., and which indenture, so far as the same was intended to operate as a release, was grounded upon a lease for a year dated the preceding day; IT IS WITNESSED, &c.

Deed to lead  
the uses of a  
fine.

WHEREAS, by indentures, &c., and by virtue of a fine *sur conuzance de droit come ceo*, &c., duly acknowledged by the said and his wife, unto the said and his heirs, and perfected before the justices of her majesty's court of Common Pleas at Westminster, in or as of term, in the year of the reign of his late majesty , whereupon proclamations were duly made, in consideration of the sum of L. , by the said to the said , paid all and singular the and other hereditaments hereafter described, and intended to be hereby , were conveyed and assured unto the said and his heirs, to such uses, &c.

Recovery  
deed.

WHEREAS, by indentures, &c., and by virtue of a common recovery with double voucher, suffered pursuant thereto before the justices of her majesty's court of Common Pleas at Westminster, in the term, in the year of the reign of , wherein the said was vouched, all and singular the and other hereditaments, situate and being in hereafter particularly described, and intended to be hereby , were conveyed, limited, and assured unto and to the use, &c.

Conveyance  
to uses to re-  
vent dower.

WHEREAS, by indentures, &c., in consideration of the sum of L. , by the said C. D. paid to the said A. B., and for the nominal consideration therein mentioned, all, &c., were conveyed, limited, and assured;\* To, upon, and for such uses, trusts, powers,

provisos, and declarations, as the said C. D., by any deed or deeds, writing or writings, with or without power of revocation, to be by him sealed and delivered in the presence of, and attested by two or more witnesses, should, from time to time, direct, limit, or appoint, and until, and also in default of any such direction, limitation, or appointment, To the use of the said C. D. and his assigns during his life, without impeachment of waste, with remainder, To the use of the said E. F., his executors, and administrators, during the life of the said C. D., in trust for him the said C. D. and his assigns, with the ultimate remainder to the use of the said C. D., his heirs and assigns, for ever, [\* (or,) unto the said C. D., his heirs and assigns; To and upon the uses and trust, and with the power therein declared and contained thereof, for the sole benefit of him the said , his heirs and assigns, for ever, and so as to prevent any wife of his from being dowable thereout.]

WHEREAS, at a Court Leet and Court Baron of Court rolls. , held for the manor of , on, &c., the lord, by his steward, granted the possession of unto A. B., then aged about years, in trust and for the use of C. D., to hold unto the said A. B., (upon trust as aforesaid,) for the term of his natural life, according to the custom of the said manor of , by the yearly rent of heriots, when they should happen, suit of court, and all other customs and services therefor due, and of right accustomed; and at the same court the lord, by his steward aforesaid, granted the reversion of the same premises unto E. F., then aged about years, and G. H., &c., in trust only, and for the use of the said C. D., his executors, administrators, and assigns, to hold unto the said E. F. and G. H. (upon trust as aforesaid) for and during the term of their natural lives, and the life of the longest liver of them, according to the custom of the said manor, by the yearly rents, &c.

## CONSIDERATIONS IN DEEDS.

Common consideration in a conveyance.

Now this indenture witnesseth, that, in pursuance of the said recited agreement in this behalf, and in consideration of the sum of L.      of lawful money of the United Kingdom of Great Britain and Ireland, to the said A. B. by the said C. D., at or immediately before the execution of these presents, in hand well and truly paid, the receipt of which said sum of L. the said A. B. doth hereby acknowledge, and doth admit the same to be in full for the absolute purchase of the said messuage, tenement, and dwelling-house, hereditaments, and premises contracted for as aforesaid, and the fee-simple and inheritance thereof, and of and from the same, and every part thereof, doth acquit, release, and discharge the said C. D., his heirs, executors, administrators, and assigns, and every of them, for ever, by these presents.

When consideration is as to part secured by bond.

That, in consideration of the said bond of the said A. B., bearing even date with these presents, so executed by him the said A. B. as aforesaid, for securing the principal sum of L.      and interest, and also in consideration of the sum of L.      of lawful money of Great Britain, by the said, &c., to the said, &c., in hand well and truly paid, at or immediately before the sealing and delivery of these presents, which, making together with the said sum of L.      , so secured by the said bond of the said A. B. as aforesaid, the sum of L.      , is the full consideration-money agreed to be given by the said A. B. to the said C. D., for the purchase of the said messuage, &c., and all the estate and interest of the said, &c., therein discharged from any lien or claim at law or in equity, in respect of the said sum of L.      , secured by such bond as aforesaid; the receipt of which said sum of, &c., he the said C. D. doth hereby acknowledge, and of and from the same, and every part thereof, doth acquit, release, and discharge the said A. B., his heirs, exe-

cutors, administrators, and assigns, and every of them, for ever, by these presents.

In consideration of, &c., to the said T. W. well and truly paid by the said C. D., immediately before the execution of these presents, at the request and by the direction of the said, &c., testified by his executing these presents; and in part of the principal monies and interests now due and owing to the said, &c., on the security of the several mortgages made to him as aforesaid, and in full for the absolute purchase of the fee-simple and inheritance of the said freehold and copyhold lands and hereditaments hereinafter described, and hereby released and covenanted to be surrendered, or otherwise assured, or intended so to be, discharged of and from the payment of the residue of the same principal-money and interest, or any contribution on account thereof; the receipt, &c.

Consideration-money in part satisfaction of a mortgage.

In consideration of the sum of L.250 of lawful British money by the said E. F., at or immediately before the execution of these presents, at the request and by the direction of the said A. B., testified by his executing these presents to the said C. D., in hand, well and truly paid, the receipt, &c., and also in consideration of the further sum of L.750 of like lawful money, by the said E. F. to the said A. B., at the same time well and truly paid, the receipt of which said sum of L.750, and also the payment in manner aforesaid of the said sum of L.250, making together the sum of L.1000, he the said A. B. doth hereby acknowledge, &c.

When part was paid to a third person by vendor's direction.

OPERATIVE PARTS.

He the said A. B. hath [insert the words applicable to the mode of conveyance in the past tense] and, by these presents, doth [repeat the words in the present tense] unto the said

By one.

They the said A. B., C. D., and E. F., have, and

By several.

every of them *hath*, &c., and by these presents do, and every of them *doth*, &c.

Feoffment.	Give, grant, enfeoff, and confirm.
Grant.	Grant and confirm.
Bargain and sale.	Bargain and sell.
Release in fee.	Grant, bargain, sell, <sup>a</sup> alien, release, and confirm.
Mortgage for a term.	Grant, bargain, sell, and demise.
In a lease.	Demise, lease, set, [and to farm let.]
Assignment.	Bargain, sell, assign, transfer, and set over.
Release.	Remise, release, and for ever quit claim.
Surrender.	Surrender and yield up.

## GRANTS IN DEEDS.

Reference in a release to the lease. **DOTH** grant, bargain, sell, alien, release, and confirm unto the said C. D., (in his actual possession now being, by virtue of a bargain and sale to him thereof, made by the said A. B., in consideration of 5s., by indenture bearing date the day next before the day of the date of these presents for one whole year, commencing from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute made for transferring uses into possession,) and to his heirs and assigns, all, &c.

*In an Appointment of Land.*

He the said [A.B.] pursuant to, and by virtue and in exercise of the power and authority to him the said A.B., by the said indenture of release of, &c., for this purpose given, or limited as hereinbefore mentioned, and all other powers and authorities whatsoever enabling him in this behalf, **DOTH**, by this present deed or instrument in writing, by him the said A. B., sealed and delivered in the presence of, and attested by the two credible persons whose

<sup>a</sup> In a mortgage alien should be omitted.

names are intended to be hereupon indorsed as witnesses, attesting the sealing and delivery hereof by him, irrevocably direct, limit, and appoint, that all, &c., [or all and singular the messuages, lands, tithes, and other hereditaments (hereinbefore or hereinafter) particularly described, and intended to be hereby, &c.,] shall from henceforth go and remain: and that the said indenture of, &c., shall, as to the said messuage and hereditaments hereby limited and appointed, operate and enure to the use, &c., [or, to the uses upon the trusts, &c.,] hereinafter (or hereinbefore) declared and contained, of and concerning the same messuage, lands, hereditaments, and premises, for the sole benefit of the said C. D., his heirs and assigns.

*A Shorter Form.*

He the said A. B., by virtue of the power reserved to him by the said indenture of, &c., [or, by an indenture bearing date, &c.,] and all other powers enabling him in this behalf, DOth direct, limit, and appoint, that the hereditaments, &c., shall henceforth be and continue, and that the said recited indenture shall operate and enure to the use, &c., [or, to such uses, &c.]

PARCELS IN DEEDS.

All that messuage and farm called C., situate in the parish of E. in the county of S., and which hereditaments do consist of, &c., and do contain, &c., and were formerly the inheritance of, &c., and were late in the occupation of, &c.

[If a new description be required, after setting forth the old description, say,] Which said messuages, &c., are now better known or described by the several names, quantities, and other certainties hereinafter mentioned, (that is to say,) all, &c.

[Or, the new description may come first, and then,] Which said messuages, &c., are the same as



were comprised in certain indentures of, &c., and were therein described as, all, &c. (*setting forth the old description.*)

[*Or, in recitals, after the old description, then say,*] Which said messuage, &c., are the same as are hereinafter described and hereby released, &c. [Then in the operative part will come the new description.]

[*Or, not stating in the recital the old description of the parcels fully, but merely*] The messuages, &c., therein particularly mentioned and described, being the same messuages, &c., as are hereinafter described, &c.

[*When schedules are adopted, the recitals may be thus,*] Whereas, by indenture, &c., all, &c., which are comprised and described in the first schedule to these presents, with their rights, members, and appurtenances, were conveyed and assured, &c.

[*And in the granting or operative part,*] All those, &c., mentioned and described in the first, second, third, &c., schedules, in or to these presents, and every part and parcel, &c.

[*If a map or plan is contained in the deed, say,*] Which said hereditaments are more particularly delineated or described in the map or plan written in the margin (or contained in the schedule) to these presents, (as the case may be.)

[*When freehold and copyholds are blended,*] All such, and so many, and such parts as are freehold of and in, all, [then a full description.]

Premises,  
amongst  
others, which  
have been  
mortgaged.

All such, and so many, and such part of the said hereditaments, comprised in the said indentures of, &c., and thereby demised, as are comprised in the said hereinbefore recited indentures, in the schedule hereunder written or hereunto annexed.

Term of  
years.

[*Or,*] All such, and so many, and such parts of the hereditaments as are comprised in the said term, and are now vested in the said, &c., for the residue thereof.

General words  
to houses.

With all outhouses, edifices, buildings, cellars, solars, vaults, areas, courts, pumps, cisterns, privies,

sewers, drains, backsides, gardens, lights, ways, paths, passages, waters, watercourses, liberties, privileges, easements, profits, commodities, advantages, and emoluments whatsoever, to the said messuage, &c., hereby released, or otherwise assured, or intended so to be, or any of them respectively belonging, or in any-wise appertaining, or accepted, reputed, deemed, held, used, occupied or enjoyed, as part, parcel, or member thereof, or any of them respectively.

Together with all and singular houses, outhouses, edifices, buildings, barns, stables, yards, gardens, orchards, ways, paths, passages, waters, watercourses, timber and other trees, woods, underwoods, feedings, commons, common of pasture, hedges, ditches, mounds, fences, profits, commodities, advantages, and appurtenances whatsoever, to the said, &c. General words to houses and lands.

And the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits, of the said messuage, &c., hereby released, or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances. Reversion, &c.

And all the estate, right, title, use, trust, inheritance, term and terms of years, property, possession, benefit, claim, and demand whatsoever, both at law and in equity, or otherwise howsoever, of him the said (*vendor*) of, in, to, out of, or upon the said messuage, &c., hereby released, or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances. Estate, &c.

Together with all deeds, papers, writings, and muni- Deeds, &c. ments of title whatsoever, relating to the same premises.

## EXCEPTIONS IN DEEDS.

EXCEPTING and always reserving, forth and out of this present demise and lease, unto the said A. B. and his assigns, (and the person or persons who, for the time being, shall be entitled, in remainder, to the Exception of timber.

Landlord to enter to view repairs, and to fell timber.

Liberty to plant in the hedge-rows.

freehold and inheritance of the said premises, under the said indenture of release,) all and all manner of timber, and trees likely to become timber, which are now, or at any time or times during the continuance of this demise or lease, shall or may be, standing, growing, and being, in and upon the said hereby demised lands and premises, or any part thereof, with full and free liberty, privilege, and authority, to and for the said A. B. and his assigns, (and the lessor of the said premises for the time being,) or any of his or their servants, agents, chapmen, labourers, and workmen, at their, or any of their, free will and pleasure, at any time during the continuance of this demise, to come into and upon the said hereby demised premises, to fell, stock, and cut down the same, in and upon the said premises, to cleave, cord, hew, square, saw, lay, and place the same timber and trees, and to make coal-pits, and saw-pits for the sawing thereof, and coal fires and hearths, and to dig, get, and take turfs, earth, and clods, and to do every other act and thing which shall be necessary and requisite for the charcoaling, converting, and working up thereof, and with horses, oxen, wains, carts, and other carriages, to take and carry away the same, making reasonable satisfaction to the said [*lessee*,] his executors, or administrators, for the damage he or they shall or may sustain thereby, in corn, grain, or mowing grass. AND ALSO *excepting and always reserving*, for and out of this present demise and lease, unto the said A. B. and his assigns, and the lessor of the said premises for the time being, and his, her, their, or any of their, servants, agents, or workmen, during the continuance of this demise or lease, at all seasonable times in the year for the planting of trees, full and free liberty to come and be in and upon the said demised lands and premises, and in the hedge-rows and fences thereof to set and plant such and so many young trees, as he, they, or any of them, shall from time to time think proper, and to do every needful and necessary act to fence in and preserve the same.

AND ALSO *excepting and always reserving*, forth Exception.  
Game. and out of this present demise and lease, unto the said A. B. and his assigns, and the lessor of the said premises for the time being, all hares, partridges, pheasants, birds and beasts of warren or chase, which at any time during the continuance of this demise, are or shall come, be bred, or found in or upon the said demised premises; and all fish-pits, ponds, or fishing-places there, together with Fish. full and free liberty, power, and authority, to and for the said A. B. and his assigns, and the lessor of the said premises for the time being, and his and their servants, agents, friends, and followers, to enter and come into and upon the said demised premises, at any time during the continuance of this demise, with horses, and such dogs, guns, nets, and other engines, as he or they shall see proper, to hunt, hawk, fish, fowl, take, and carry away the same, at his and their free wills and pleasures, doing no wilful damage thereby in mowing grass or standing corn; and for the purpose of taking the fish, to draw down and let dry any pits, ponds, or fishing-places, and to make any ditches or drains, and to do all other acts and things which shall be necessary for the drawing or fishing thereof, he the said A. B. and his assigns, and the lessor of the said premises from time to time, afterwards repairing and making good the dams of such pits or ponds as shall be so drained or let dry as aforesaid.

AND ALSO *excepting and always reserving*, forth Mines. and out of this present demise and lease, unto the said A. B. and his assigns, (and the [*lessor*] of the said premises for the time being,) all mines and minerals that are, or shall, or may be found in or upon the said demised premises, with leave to search for, dig, get, have, take, and carry away the same.

AND ALSO *excepting and always reserving*, forth Liberty to  
plant, but not  
to exceed  
twenty acres. and out of this present demise, unto the said A. B. and his assigns, (and the lessor of the said premises for the time being,) and his and their servants, agents, and

workmen, at any time or times during the continuance of this demise or lease, upon him or them first giving twelve months' previous notice in writing of such his or their intention unto the said [*lessee*,] his executors or administrators, or by leaving the same at his or their last or most usual place or places of abode, to enter upon and take into his or their possession, and as he, the said A. B. and his assigns, or the lessor of the said premises for the time being, shall think fit and proper, all or any part or parts of the said demised lands and premises, not exceeding in the whole twenty acres, for the purpose of planting young trees therein and thereon, and to fence in and enclose the same, and to use and enjoy the said excepted premises in all respects as if this demise had not been made, he the said A. B. and his assigns, or the lessor of the said premises for the time being, from the time or times of every such entry yearly, and every year, during the then remainder of this demise or lease, making an allowance or abatement unto the said lessee, his executors or administrators, out of the yearly rents hereby reserved, of the sum of L.2, 12s. 6d. for each and every acre of the said demised premises, and so in proportion, and after that rate for any greater or less quantity than an acre, as shall be so entered upon and taken for the purpose of planting as aforesaid.

Short exception of timber in a lease.

EXCEPTING and always reserving, out of this present demise and grant, unto the said A. B., his executors, administrators, and assigns, all timber-trees, and trees likely to be timber, now standing, growing, or being, or which at any time, during the term hereby granted, shall stand, grow, or be in or upon the said demised premises, or any part thereof, together with free liberty of ingress, egress, and regress, to and for the said A. B., his heirs and assigns, to fell, cut, and carry away the same at fit and seasonable times in the year.

Exception of a room for bagging hops.

EXCEPTING out of these presents (during the hop season only) the, &c., room for the keeping the hops

arising from the hop-yards, &c., aforesaid ; and the use of the, &c., room for bagging of such hops as shall grow on the said hop-yard, with free ingress, regress, and egress for the said A. B. and his servants, to and from the said rooms, for the purposes aforesaid.

EXCEPTING and always reserving, out of this present grant and release, all that messuage or tenement, with the appurtenances, lying in, &c., aforesaid, wherein one E. F. now dwells ; and all the gardens, orchards, lands, meadows, pastures, woods, underwoods, commons, and hereditaments to the said messuage belonging, or in any wise appertaining, or usually occupied and enjoyed therewith, or reputed or esteemed as part or parcel thereof, or as belonging thereunto ; and all the rents and services issuing, due, or payable out of, for, or in respect of the same, or as incident thereunto.

Exception (in a release of a manor) of a messuage, &c.

## HABENDUMS IN DEEDS.

TO HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby released, or otherwise assured, or intended so to be, and every part and parcel thereof, with their and every of their appurtenances, unto the said [C. D.,] his heirs and assigns ; to the only proper use and behoof of the said [*purchaser,*] his heirs and assigns, for ever.

To have and to hold the said, &c., hereby released, or intended so to be, unto and to the use of the said C. D., his heirs and assigns, for ever.

A shorter form.

To have and to hold the said, &c., and all and singular other the premises hereby demised, or intended so to be, with their and every of their appurtenances, [*except as hereinbefore excepted,*] unto the said [*lessee,*] his executors and administrators, from the 25th day of *March* last past, for and during and unto the full end and term of twenty-one years from

In a lease.

thence next ensuing, and fully to be complete and ended, [*determinable nevertheless as hereinbefore mentioned,*] but subject nevertheless to the provisos, conditions, and agreements hereinafter contained.

In a lease for years, upon contingency of lives.

To have and to hold the said messuage or tenement, and premises hereby granted and demised, and every part and parcel thereof, with the appurtenances, (except as before excepted,) unto the said C. D., his executors, administrators, and assigns, from, &c., for and during and unto the full end and term of ninety-nine years from thence next ensuing, and fully to be complete and ended, if he the said C. D., E. his wife, and T. his son, or any or either of them, shall so long live.

In a chattel-lease in reversion.

To have and to hold the said messuage, tenement, and premises, with the appurtenances, unto the said C. D., his executors, administrators, and assigns, from and immediately after the death, surrender, forfeiture, or other determination of such estate of the said E. F., for and during the term of ninety-nine years thence next and immediately ensuing and following, and fully to be complete and ended, if he the said C. D., and E. his wife, or either of them, shall happen so long to live.

In a freehold lease for lives.

To have and to hold the said, &c., with all and singular the appurtenances, unto the said C. D., his heirs and assigns, from the day of the date of these presents, for and during the natural lives of him the said C. D., and T. D. and L. D., his sons, and for and during the life of the longest liver of them.

For all the estate a person hath in lands.

To have and to hold the said, &c., and all and singular other the premises hereby granted and assigned, or intended so to be, with their and every of their appurtenances, unto the said C. D., his executors, administrators, and assigns, for and during all such term, estate, and interest as he the said A. B. hath therein.

Household goods, &c.

To have and to hold the said household goods, chattels, and effects hereby assigned, or intended so to be, unto and by the said [C. D.,] his executors,

administrators, and assigns, to and for his and their own use and benefit.

To have and to hold the said, &c., hereby assigned, or intended so to be, and every part thereof, with the appurtenances, unto the said C. D., his executors, administrators, and assigns, for and during all the rest, residue, and remainder yet to come and unexpired, of the said term of ninety-nine years, demised unto the said A. B., by the said in part recited indenture of lease, as hereinbefore mentioned, subject nevertheless to the payment of the rent, and to the performance of the covenants, conditions, and agreements therein contained, and which from the day of, &c., now last past, (on the lessee's or assignee's part,) are and ought to be paid, performed, fulfilled, and kept, for or in respect of the said premises.

In an assignment of a lease.

To have and to hold the said, &c., hereby assigned, or intended so to be, and every part and parcel thereof, with their and every of their appurtenances, unto the said C. D., his executors, administrators, and assigns, from henceforth, for and during all the rest and residue of the said term of one hundred years, in and by the said recited indenture of demise created, yet to come and unexpired; subject nevertheless to such right and equity of redemption by the said A. B., his heirs and assigns, as the same are now liable unto, under and by virtue of the proviso, condition, or agreement for that purpose therein contained.

For residue of a term subject to redemption.

To have, hold, receive, take, and enjoy the said annuity, or yearly sum, of, &c., unto the said C. D. and E. F., their heirs and assigns, for ever, by four equal quarterly payments in the year, on, &c., by even and equal portions, the first quarterly payment thereof to begin and to be made on the, &c., which shall next happen after the decease of him the said A. B.

Annuity in fee after a life.

REDDENDUMS.

Yielding and paying therefor unto the said A. Reservation



of rent half-yearly.

*B.*, his heirs and assigns,<sup>†</sup> during the first year of the said term hereby demised, the rent or sum of L. , and yearly and every year, during the residue of the said term, the yearly rent or sum of L. of like lawful money, upon the two most usual feasts or days of payment in the year, (that is to say,) the 29th day of September and the 25th day of March in each and every year, by even and equal portions; the first payment thereof to begin and be made on the 29th day of September next ensuing the date of these presents; (the said payments to be made without any deduction or abatement whatsoever.)

Reservation of rent, in a lease by a tenant for life, under a power in a settlement.

Yielding and paying therefor unto the said W. W. and his assigns, and such other person or persons who, for the time being, shall be successively entitled to the freehold and inheritance of the said demised premises in possession, under and by virtue of the said indenture of release as aforesaid, during the first year of the said term hereby demised, the rent or sum of L. , of, &c.; and yearly, and every year during the residue of the said term, the yearly rent or sum of L. of like lawful money, upon the two most usual feasts or days of payment in the year; (that is to say,) the 29th day of September, and the 25th day of March, in each and every year, by even and equal portions, the first payment thereof to begin and be made on the 29th day of September next ensuing the date of these presents, the said half-yearly payments to be made without any deduction or abatement whatsoever. And also yielding and paying unto the said A. B. and his assigns, (and such other person or persons as aforesaid,) over and above the yearly rent hereinbefore reserved, yearly and every year during the continuance of this demise, the further yearly rent or sum of L.20 of lawful money for every acre (exceeding two acres) which

Penalty for sowing flax, hemp, rape, madder, or potatoes.

<sup>†</sup> If the lessor has only a chattel interest himself, the reservation must be "to his executors, administrators, and assigns."

the said [*lessee*,] his executors, administrators, or assigns, shall so sow, set, or plant with flax, hemp, rape, wood, madder, or potatoes; and so in proportion for any greater or smaller quantity than an acre, such payment to be made on such of the said days or times of payment as shall next happen after such sowing, setting, or planting, as aforesaid, and to continue payable during the residue of the said term hereby demised. And also yielding and paying therefor yearly, and every year during the continuance of this demise, unto the said A. B. and his assigns, and such other person or persons as aforesaid, over and above the said yearly and other rents hereinbefore reserved, for every acre of the meadow or ancient mowing-ground hereby demised, that he the said [*lessee*,] his executors, administrators, or assigns, or any of them, shall dig, plough, break up, or convert into tillage, or cause, permit, or suffer to be dug, ploughed, broke up, or converted into tillage, the further yearly rent or sum of L.20 of like lawful money, and so proportionably, and after that rate, for any greater or smaller quantity than an acre, such payment to be made on such of the said days or times of payment as shall next happen after such digging, ploughing, breaking up, or converting the same into tillage as aforesaid, and to continue payable during the then residue of the said hereby demised term. And also yielding and paying unto the said A. B. and his assigns, and such other person or persons as aforesaid, over and above the said yearly and other rents hereinbefore reserved, yearly and every year after the first eight years of the said term hereby demised, the further yearly sum of L.20 of like lawful money, for each and every acre of the said premises, exceeding the quantity of 220 acres, which the said W. L., his executors, administrators, or assigns, shall dig, plough, break up, or have in tillage, and so in proportion for any greater or less quantity than an acre; such last mentioned payment to begin and be made on such of the said days or times of payment

Penalty for  
ploughing  
pasture.

Penalty for  
having, after  
the first eight  
years, more  
than 220 acres  
in tillage.

as shall next happen after such digging, ploughing, breaking up, or having the same in tillage as afore-said, and to continue payable during the then residue of the said term.

To a tenant in tail.

Yielding and paying yearly and every year during the said term, unto the said , his heirs and assigns, or such other person or persons, who, for the time being, shall be entitled to the reversion or inheritance of the said premises, expectant on the determination of the said term, the clear yearly rent of L. , &c.

This, by omitting the words "his heirs," may be used in a lease under a power.

In a lease by husband, under the stat. Henry VIII.

Yielding and paying, &c., unto the said [husband] and S. his wife, and the heirs and assigns of the said S., the clear yearly, &c.

## USES.

In fee.

To the only proper use and behoof of the said A. B., his heirs and assigns, for ever.

Joint tenants.

A. B. and C. D., their heirs and assigns, for ever.

Tenants in common.

A. B. and C. D., their heirs and assigns, as tenants in common.

In tail.

A. B. and the heirs [male] of his body, [on the body of the said to be begotten.]

For life.

A. B. and his assigns, for and during the term of his natural life, [without impeachment of, or for any manner of waste.]

To trustees, to support contingent remainders.

And from and immediately after the determination of that estate by forfeiture or otherwise, in the lifetime of the said A. B., to the use of the said C. D. and E. F., their heirs and assigns, during the life of the said A. B., in trust, to preserve the contingent uses and estates, hereinafter limited, from being defeated or destroyed; and, for that purpose, to make entries and to bring actions, as occasion shall require. But, nevertheless, to permit and suffer the said A. B. and his assigns to have, receive, and take the rents,

issues, and profits of the said messuage, lands, and other hereditaments, during his life, for his and their own use and benefit; and immediately from and after the decease of the said A. B.

To the use of the first son of the body of the said A. B., on the body of the said L. M. to be begotten, and of the heirs [male] of the body of such first son, lawfully issuing; and, for default of such issue.

To the first son in tail.

To the use of the second, third, fourth, fifth, and all and every other the son and sons of the body of the said A. B., on the body of the said L. M. to be begotten, severally, successively, and in remainder, one after another, as they and every one of them shall be in seniority of age or priority of birth, and of the several and respective heirs [male] of the body and bodies of all and every such son and sons, lawfully issuing, the elder of such sons, and the heirs [male] of his body issuing, being always to be preferred and to take before the younger of such sons, and the heirs [male] of his and their body, and respective bodies issuing; and, for default of such issue.

To the second and every other son in tail.

To the use of all and every the daughter and daughters of the said A. B., on the body of the said L. M., his intended wife, to be begotten, equally to be divided between or amongst them, share and share alike, as tenants in common, and of the several and respective heirs [male] of the body and bodies of all and every such daughter, and daughters lawfully issuing; and, in case there shall be a failure of issue of any one or more of such daughters, then, as well as to the original share or shares of, as the share or shares surviving or accruing to such last mentioned daughter or daughters, or her or their issue, to the use of all and every other the daughter or daughters of the said A. B., on the body of the said L. M. to be begotten, equally to be divided between or amongst them if more than one, share and share alike, as tenants in common, and of the several and respective heirs of their bodies issuing; and, in

To the daughters, as tenants in common in tail.

With cross remainders between them.

case all such daughters but one shall happen to die without issue, or, if there shall be but one such daughter, then to the use of such one daughter, and of the heirs of her body lawfully issuing; and, for default of such issue, to such uses, &c.

Uses to prevent dower attaching.

To such uses, upon such trusts, to and for such intents and purposes, and with, under, and subject to such powers, provisos, agreements, and declarations, as the said A. B. shall, by any deed or deeds, writing or writings, with or without power of revocation, to be by him sealed and delivered in the presence of, and to be attested by, two or more credible witnesses, from time to time, direct, limit, or appoint, and, in default of, and until such direction, limitation, or appointment, and so far as any such shall not extend to the use of the said A. B. and his assigns, during his life, without impeachment of waste, and after the determination of that estate by forfeiture or otherwise in his lifetime, to the use of the said C. D. and his heirs, during the life of the said A. B., in trust for him the said A. B. and his assigns during his life, and from and immediately after the determination of the estate hereinbefore limited to the said C. D. and his heirs during the life of the said A. B., to the use of him the said A. B., his heirs and assigns, for ever; and it is hereby declared by the said [purchaser,] that no widow of him the said [purchaser,] who shall happen to survive him, shall be entitled to any dower out of or in the said messuage, &c., hereby granted and released, or intended so to be.

To uses according to appointment.

To the use of such person or persons, and for such estate and estates, uses, ends, intents, and purposes, as the said L. S.\* shall, from time to time, by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be by him sealed and delivered in the presence of, and attested by, two

\* If a femme covert, insert here, "notwithstanding her coverture, and whether she shall be sole or covert."

or more credible witnesses, or by his last will and testament in writing, direct, limit, or appoint.

To the use of all and every, or such one or more of the child or children of the body of the said on the body of the said his intended wife, to be begotten, in such shares and proportions, (if more than one,) and for such estate and estates, and with and under such restrictions, limitations, and remainders over, to or for the benefit of such other of them, and in such manner and form, and charged or chargeable with any sum or sums of money, either annual or in gross, for the benefit of any or either of such child or children, (such sum and sums of money being made payable to a son or sons at the age of twenty-one years, and to a daughter or daughters at the age of twenty-one years, or day or days of marriage,) as they the said and his intended wife shall, during their joint lives, from time to time, by any deed or deeds, writing or writings, either with or without power of revocation, to be by them respectively signed, sealed, and delivered, in the presence of, and attested by, two or more credible witnesses, jointly direct, limit, or appoint.

To such children as father and mother, or survivor, shall appoint.

To the use of the said A. B. and C. D., their executors, administrators, and assigns, for, and during, and unto the full end and term of five hundred years thence next ensuing, and fully to be complete and ended, without impeachment of, or for any manner of waste, upon, to, and for the several intents and purposes, and under and subject to the several provisos and agreements hereinafter expressed, and declared of and concerning the same term, and from and after the end, expiration, or other sooner determination of the said term of five hundred years, and in the meantime subject thereto and to the trusts thereof, to the use, &c.

To trustees for a term.

## TRUSTS.

Trusts for sale  
of real estate.

\* Upon trust, with all convenient speed after my decease, absolutely to sell and dispose of [the said freehold, leasehold, and copyhold hereditaments and premises] hereinbefore devised and bequeathed, either together or in parcels, and either by public auction or private contract, or partly by public auction and partly by private contract, and for such price or prices, and under and subject to such conditions, terms, and stipulations, as to them or him shall seem fit and expedient, with full liberty for them or him to buy in the same or any part thereof at any auction, and also to rescind or alter any contract that may be entered into for the sale thereof, or for any part thereof, and to resell, by any of the means aforesaid, such part thereof as may be so bought in, or the contract for the sale whereof may be so rescinded as aforesaid, and to convey and assure the same unto the purchaser or respective purchasers thereof, or as he or they shall direct, and enter into, make, do, and execute all such covenants, conveyances, and assurances, as may be necessary for effectuating all or any of the purposes aforesaid, [*the usual declaration that the receipts of executors and trustees shall be effectual, renders any reference to it here unnecessary.*]

For conversion of personal estate.

\* Upon trust, with all convenient speed after my decease, to sell, dispose of, and convert into money, so much thereof as shall be saleable, and collect, get in, and receive the residue thereof, or continue the same upon such stocks and securities, wherein, or upon which the same may happen to be invested at the time of my decease.

For investment.

And lay out and invest the money to be received as aforesaid, in their or his names or name, in the parliamentary stocks or public funds of Great Britain, or at interest on government or real securities in England or Wales, and to alter, vary, and transfer

\* With a few obvious alterations, these forms may be used in a deed.

the same for or unto other stocks, funds, or securities, when and so often as they or he shall think fit.

Upon trust, that they the said trustees or trustee for the time being, of [this my will (or) these presents] shall and do pay unto, or otherwise permit and suffer, or authorise and empower the said C. D. or his assigns, to receive and take the dividends, interest, and annual produce of the said trust monies, for his use and benefit during his natural life.

To pay interest to one for life.

Upon trust, that they the said trustees, &c., shall and do, from time to time, as the same shall become due and payable, pay and apply the interest, dividends, and annual produce of the said trust monies, stocks, funds, and premises, into the proper hands of her the said E. F., or to such person or persons as she shall, from time to time, by any note or writing under her hand, but not by way of anticipation, order or direct, to the intent that the same interest, dividends, and annual produce, may be for the sole and separate use and benefit of the said E. F., independent of [her present or her said intended husband, or] any husband with whom she may, at any time hereafter, happen to intermarry, and not be subject to his debts, control, contracts, or engagements, and for which dividends, interest, and annual produce, [it is hereby agreed and declared, (or) I do hereby direct and declare,] that the receipt or receipts in writing of the said E. F., or the person or persons to whom she shall order the same to be paid, as aforesaid, shall be the only sufficient discharge for the said interest, dividends, or annual produce, or for so much thereof as in such receipt or receipts shall be acknowledged to be received.

To the separate use of a woman.

## POWERS.

Provided always, and it is hereby agreed and declared between and by the said , that, in case default shall be made in payment of the said princi-

Power of sale in a mortgage.



pal sum of L.                      and interest, on the                      day of                      , or in keeping the said herebefore mentioned messuage and premises insured against loss or damage by fire, according to the covenant of the said                      , herein contained, (of which default the attempt to exercise this present power shall be deemed conclusive evidence in favour of all persons claiming under the same power,) then, and in any of the said cases, it shall and may be lawful for the said                      , his heirs, executors, administrators, or assigns, without any further or other authority, concurrence, or consent of or from the said                      , his heirs, executors, administrators, or assigns, to make sale of all or any part of the hereditaments and premises hereinbefore described, and intended to be hereby                      , with their appurtenances, [and the inheritance thereof in fee-simple,]\* under and subject to such conditions, stipulations, and agreements as he or they shall think proper, either together or in parcels, and either by public auction or by private contract, or by both of such means, and to buy in the same premises, or any part thereof, at any such auction or auctions, and to rescind or relinquish any sale or contract for the sale of the said hereditaments and premises, or any part thereof, and afterwards to resell such hereditaments so bought in, or in respect of which such sale or contract shall be so rescinded or relinquished as aforesaid, with the appurtenances, in either of the ways aforesaid, without being responsible for any loss, expense, or diminution in price which may be occasioned thereby, and make, enter into, and execute all such contracts, conveyances, and assurances, as shall be requisite or deemed expedient for effectuating and completing

\* If the premises should be subject to a prior mortgage, insert, "and in case the same shall be sold during the continuance of the said hereinbefore in part recited security of                      , either subject to, or with the concurrence of the person or persons, for the time being, interested therein, discharged from the same mortgage security, and the principal, interest, and other monies thereby secured."

such sale or sales; and it is hereby further agreed and declared between and by \_\_\_\_\_, that, in case any such sale or sales shall be made as aforesaid, he the said \_\_\_\_\_, his heirs, executors, administrators, or assigns, shall, in the first place, out of the monies which shall be thereby produced, pay and satisfy all costs, charges, and expenses of preparing for and making, or otherwise attending or occasioned by such sale or sales, and making out the title to the hereditaments so sold, and of enforcing, if considered necessary or expedient, any contract or contracts which may be entered into for the sale thereof, or of any part thereof, or which shall otherwise be occasioned by the exercise of the powers or trusts hereby created, and shall and do, in the next place, thereout pay and retain to him the said \_\_\_\_\_, his executors, administrators, or assigns, all such principal and interest, and other monies, as shall be then due and owing to him or them, upon or by virtue of the security intended to be hereby made, and shall and do, after making the several payments and deductions aforesaid, pay the clear surplus (if any) of the monies which shall arise by such sale or sales unto the said \_\_\_\_\_, his heirs, executors, administrators, or assigns, and shall and do, in case any part of the said premises shall remain unsold, after making the several payments and deductions aforesaid, reconvey and reassure the same at the requests, costs, and charges of the said \_\_\_\_\_, his heirs, or assigns, unto him or them, or otherwise, as he or they shall direct or appoint.

And it is hereby further agreed and declared by \_\_\_\_\_ and between the said parties to these presents, that the receipt and receipts of the said J. R., &c., or the \_\_\_\_\_

Power to trustees to give receipts to purchasers.

’ If subject to a prior mortgage, insert, “ and in case the said hereditaments shall be sold, discharged of, or as exempt from the said mortgage security of \_\_\_\_\_ during the continuance of the same security, then shall and do, in the next place, out of the said monies, pay off and discharge all such principal, interest, and other monies, as may be then due and owing on the same security.”

survivors or survivor of them, or the heirs, executors, or administrators of such survivor, shall, from time to time, be a good and sufficient discharge, and good and sufficient discharges, to the purchaser or purchasers of the said several premises so to be sold as aforesaid, or of any of them, or of any part or parts thereof, and to the person or persons paying or delivering their purchase-money for the said premises and every part thereof, and to his, her, and their respective heirs, executors, administrators, and assigns, for so much of the said purchase and other money or effects as shall be therein acknowledged and expressed to be received; and that the person or persons paying any such monies, and taking such receipt or receipts for the same as aforesaid, shall not afterwards be obliged to see to the application, or be answerable or accountable for the loss, misapplication, or non-application of the same, or any part thereof.

General power to give receipts.

And it is hereby further agreed and declared between and by the parties hereto, that the receipt or receipts of the said, &c., and of the survivor of them, and of the executors, administrators, or assigns of such survivor, shall be an effectual release and discharge for any sum or sums of money which shall become payable to them, her, or him, under or by virtue of the trusts aforesaid, to any person or persons paying the same, for so much money as in such receipt or receipts shall be expressed to be received; and after such receipt or receipts, such person or persons, their or any of their executors or administrators, shall not be obliged to see to the application of such monies, nor be answerable or accountable for any loss, misapplication, or non-appearance thereof, or of any part thereof.

Power of attorney in assignment of a mortgage.

And the said A. B. doth hereby make, constitute, and appoint, and in his place and stead put, the said C. D., his executors, administrators, and assigns, to be the true and lawful attorney and attorneys of him the said A. B., to demand, sue for, recover, and re-

ceive of and from all and every person or persons who are, is, or shall, or may be liable to transfer or pay the same respectively, the said dividends, annual produce, and premises hereby assigned, or intended so to be; and on transfer or payment thereof respectively, to give, sign, and execute receipts, releases, and other discharges for the same; and on non-transfer or non-payment thereof, or of any part thereof respectively, to bring, commence, carry on, and prosecute any action, suit, or other proceeding or proceedings whatsoever, for recovering and compelling the transfer or payment of the same; and also to adjust, settle, compound, and compromise all accounts, reckonings, transactions, matters, and things whatsoever relating to the said dividends, annual produce, and premises respectively, and for all or any of the purposes aforesaid, to use the name of the said A. B., and generally to do, execute, and perform any other act, deed, matter, or thing whatsoever relative to the premises, as fully and effectually, to all intents and purposes whatsoever, as the said A. B. might or could do in his own proper person, in case these presents had not been executed, and whatsoever the said C. D., his executors, administrators, and assigns, shall lawfully do, or cause to be done, in or about the premises, the said A. B. doth hereby for himself, and for his heirs, executors, and administrators, covenant, promise, and agree with and to the said C. D., his executors, administrators, and assigns, to allow, ratify, and confirm.

Provided always, and it is hereby agreed and declared between and by the parties hereto, that (notwithstanding any of the uses, estates, or limitations aforesaid) it shall and may be lawful to and for the said C. B. and E. B., from time to time, and at all times during their joint lives, by any deed or deeds, writing or writings, to be by them jointly sealed and delivered, in the presence of, and attested by two or more credible witnesses, to revoke, determine, and

Power of revocation of trusts of money.

make void all and every, or any of the trusts, powers, provisos, declarations, and agreements hereinbefore declared and contained, of and concerning all or any part of the said sums of L.      and L.      , or either of them, and the stocks, funds, and securities upon which the said sums, or either of them, or any part respectively, are, is, or shall be invested or laid out, and the interest, dividends, and annual produce thereof; and by the same deed or deeds, writing or writings, or by any other deed or deeds, writing or writings, to be by them also jointly sealed and delivered in the presence of, and attested by the like number of witnesses, to declare, limit, or appoint any new or other trust or trusts, right or rights, interest or interests, powers and provisos, of and concerning the said sums of L.      and L.      , or either of them, and the stocks, funds, or securities in or upon which the said sums, or either of them, or any part thereof respectively, are, is, or shall be invested or laid out, and the interest, dividends, and annual produce thereof, or any part thereof, whereof or concerning which such revocation or alteration shall be so made, with or without power of revocation, or of making a new appointment or otherwise, as they shall think fit.

Power of  
jointuring in  
a will.

Provided, &c., that it shall and may be lawful to and for the said J. L. and H. L., as when and during such time as they shall respectively be entitled in possession to the said hereditaments and premises, or the rents and profits thereof, by virtue of this my will, (but subject and without prejudice to, &c.,) by any deed or deeds, writing or writings, to be by them respectively sealed and delivered, in the presence of, and attested by two or more credible witnesses, or by their respective last wills and testaments, to grant, limit, or appoint any annual sum or yearly rent-charge, to be issuing and payable out of all or any of the aforesaid messuages, &c., (other than except, &c.,) unto or to the use of such woman or women as they shall hereafter respectively marry

during the life of each such woman respectively, by even and equal half-yearly or quarterly payments, free from all taxes, for or in nature of a jointure or jointures, and in lieu and bar of her and their dower or dowers ; and to give and grant such powers and remedies by distress and entry for recovering such annual sum or yearly rent-charge when in arrear, and the costs, charges, and expenses occasioned by the non-payment thereof, as are in like cases usual ; and also by such deed or deeds, will or wills as aforesaid, to demise, grant, and devise the same messuages, &c., to any person or persons for any term or terms of years, in trust, in the usual manner, for the securing the payment of such jointure or jointures, and the arrears thereof, and such grants, limitations, and appointments to be made either before or after such marriage, but so that such annual sum or yearly rent-charge do not exceed L.                      per annum, for and in respect of every L.                      which the said J. L. and H. L. shall respectively become entitled to, and actually have and receive as and for the portion or fortune of each woman respectively ; and so in proportion for every greater or less sum than L.                      which the said J. L. and H. L. shall so respectively become entitled to, and actually have and receive as aforesaid, and so that such annual sum or yearly rent-charge exceed not in the whole the sum of L.                      a year, but so that such term or terms of years be made to determine on the death of the woman or women for the benefit of whom the same shall be created, and the payment of the arrears of her or their rent-charge or rent-charges, and the expenses incurred by the non-payment thereof.

Provided always, [and it is hereby agreed and declared between and by the parties hereto,] (or) [and I do hereby declare and direct,] that it shall be lawful for the trustee or trustees of [these presents,] (or) [this my will] for the time being, at any time or times after [the solemnization of the said intended marriage, (or) [my decease,] with the con-

To vary securities in a deed or will.

sent in writing of the said A. B. and C. D., or the survivor of them, and after the decease of such survivor, then, by, and of the proper authority, and at the discretion of such trustees or trustee for the time being, to call in, sell, transfer, or dispose of all or any part of the stocks, funds, and securities which for the time being shall be vested in such trustee or trustees upon any of the trusts aforesaid, and to lay out and invest the principal monies to arise by such calling in sale, transfer, or disposition, in the names or name of such trustees or trustee for the time being, in some or one of the parliamentary stocks or funds of Great Britain, or at interest on government or real securities in England or Wales, to be from time to time in like manner altered, varied, and transposed for or into other stocks, funds, and securities of the like nature, when and so often as occasion may require, as they or he shall think proper. And [it is hereby agreed and declared by the said parties,] (*or*) [I do hereby also declare and direct,] that the said trustees or trustee for the time being shall stand possessed of and interested in all such new and other stocks, funds, or securities as aforesaid, and the interest, dividends, and annual produce thereof, upon and for such and the same trusts, intents, and purposes, and under and subject to such and the same powers, provisos, declarations, and agreements as are in and by [these presents,] (*or*) [this my will,] expressed, declared, and contained of and concerning the premises which shall be so sold, transferred, or disposed of as aforesaid, and the interest, dividends, and annual proceeds thereof, or as near thereto, as the death of parties and other circumstances will permit.

Of advancement.

Provided always, &c., that it shall be lawful for the trustees or trustee for the time being, &c., in the lifetime, and with the consent in writing of the said A. B. and C. D., or of the survivor of them, and after the decease of such survivor, by and of the proper authority, and at the discretion of the said

trustees or trustee for the time being, at any time or times, to apply and dispose of any part or parts of the share or shares, portion or portions, of such of the children of the said [intended marriage,] (or) [A. B.,] as shall be a son or sons, of and in the said trust premises, not exceeding one-third part of his or their then presumptive or expectant, or their vested share or shares, portion or portions, in or for the placing or putting of him or them in or to any profession, business, or employment, or for his or their instruction therein, or for purchasing a commission or commissions in the army or otherwise for his or their benefit, or advancement in the world.

Provided always, &c., that it shall and may be <sup>To lease.</sup> lawful to and for <sup>a</sup>[the trustees or trustee for the time being, of, &c., with the consent in writing of the said A. B. if living, but if not, then of the proper authority of such trustees or trustee,] or <sup>a</sup>[the said A. B. during his life, or after his decease for the person or persons who under or by virtue of the limitations or conditions hereinbefore contained, shall for the time being be entitled to the first or immediate estate of inheritance, or beneficially entitled in possession to the rents and profits of the said messuages, &c., hereinbefore granted and released, or intended so to be, if such person or persons shall be of full age, but if not, then for the guardian or guardians, for the time being, of such person or persons during his or their minority or respective minorities,] or <sup>b</sup>[for the said *tenants for life*.] When, and as by virtue of the limitations hereinbefore contained, they shall respectively be in possession, or beneficially entitled to the receipt of the rents and profits of the said messuages, &c., hereinbefore granted and released, or intended so to be, during their respective lives, if such persons respec-

<sup>a</sup> Where the legal estate is vested in the trustees.

<sup>a</sup> Where the limitations are to uses in strict settlement.

<sup>b</sup> Where it is intended to confine the power to the tenants for life.



tively shall be of full age, but if not, then for the guardian or guardians for the time being of such person not being of full age during his or her minority,] from time to time to demise or lease all and every part or parts of the same hereditaments, with the appurtenances, to any person or persons for any term or number of years not exceeding twenty-one years, in possession, and not in reversion, or by way of future interest, but so that there be reserved and made payable in every such lease during the continuance thereof, the best and most improved yearly rent or rents, to go along with, and be incident to, the immediate reversion or remainder of the premises so to be leased, that can or may be reasonably obtained for the same, without taking any premium or fore-gift for the making thereof, and so that in every such lease there be contained a condition of re-entry on non-payment of the rent or rents thereby reserved, by the space of twenty-one days next after the same shall become due and payable, and so that the lessee or respective lessees to whom such lease shall be made, seal and deliver a counterpart or duplicate thereof, and be not by any clause or words therein contained, authorised to commit waste, or exempted from punishment for committing waste.

Of revocation  
and new ap-  
pointment.

Provided always, &c., that it shall and may be lawful to and for the said A. B., at any time or times hereafter, by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by him in the presence of, and attested by two or more credible witnesses, or by his last will and testament in writing, or any codicil or codicils thereto, to revoke, determine, and make void, or to alter or vary all and every, or any of the uses, estates, trusts, limitations, powers, and provisions hereinbefore limited, created, and declared, of and concerning the said real and personal estate and premises respectively hereby settled and assured, or expressed, or intended so to be, or any part thereof respectively,

and by the same or any other deed or deeds, instrument or instruments in writing, to be sealed, delivered, and attested as aforesaid, or by his last will and testament in writing, or any codicil or codicils thereto, to limit, appoint, direct, or declare any new or other use or uses, estate or estates, trust or trusts, power or powers, of and concerning the hereditaments of, and regarding which all or any, or every of the uses, trusts, limitations, powers, and provisions, shall be so revoked, determined, or made void, as aforesaid, which he shall think proper to limit, appoint, direct, or declare.

Provided also, &c., that it shall and may be lawful for the trustees or trustee for the time being, acting under these presents, at any time or times after the solemnization of the said intended marriage, [at the request, and by the direction of the said A. B. during his life, to be testified by some deed or writing, deeds or writings, under his hand and seal, and after his death then of the proper authority, and at the discretion of such trustees or trustee for the time being, if they or he shall think fit,] (or) [at the request and by the direction of the said *[tenants for life,]* when, and as by virtue of the limitations hereinbefore contained, they shall respectively be in possession, or beneficially entitled to the receipt of the rents and profits of the said hereditaments hereinbefore granted and released, or intended so to be, during their respective lives, (such request or direction to be testified by some deed or writing under their respective hands and seals, if such person respectively shall be of full age, but if not, then of the proper authority, and at the discretion of such trustees or trustee for the time being during their respective minorities,) and also of the proper authority and at the discretion of such trustees or trustee for the time being, during the minority of any child or children of any of them, the said *[tenants for life,]* who, by virtue of the limitations aforesaid, shall, for the time being, be entitled to the possession, or to the receipt

Sale, exchange, [and partition.]

of the rents and profits of the same hereditaments, or any share or shares thereof,] to make sale, alien, and dispose of, or to convey in exchange for, or in lieu of other messuages, lands, or hereditaments to be situated in England or Wales, all, or any part of the hereditaments hereinbefore granted and released, or intended so to be, with the appurtenances, and also any messuages, lands, tenements, or hereditaments to be purchased or received in exchange [or upon partition] under this present power, and the inheritance thereof in fee-simple, [and the undivided moiety or half part of, and in all, or any part or parts of the said hereditaments situate in the parish of S. aforesaid, and of, and in the appurtenances and the inheritance thereof in fee-simple,] to any person or persons whomsoever, either together or in parcels, and for such price or prices in money, or for such equivalent or recompence in messuages, lands, or hereditaments, and under and subject to such conditions, stipulations, and agreements as to the trustees or trustees for the time being shall seem reasonable, [or to join with any person or persons in making partition of all, or any part or parts of the hereditament situate at S. aforesaid,] and for the intents and purposes aforesaid, or any of them, it shall and may be lawful for the said trustees or trustee for the time being, at such request, and by such direction, and so testified as aforesaid, or of such proper authority, and at such discretion as the case may be by any deed or deeds, instrument or instruments in writing, to be by him or them duly sealed and delivered in the presence of, and attested by, two or more credible witnesses, to revoke, determine, and make void, all and every the uses, estates, trusts, limitations, powers, and provisos, in and by these presents limited, expressed, declared, and contained, of and concerning the hereditaments which shall be so sold or exchanged, [or of which partition shall be made as aforesaid,] or any part thereof, but without prejudice to any lease or leases which shall

have been previously made thereof in pursuance of the power of leasing hereinbefore contained, and by the same or some other deed or deeds, instrument or instruments in writing, to be by such trustees or trustee sealed and delivered, and attested as aforesaid, to limit, appoint, direct, and declare such use or uses, estate or estates, trust or trusts, of or concerning the hereditaments, the uses whereof shall be so revoked, which it shall be thought necessary or expedient to limit, declare, direct, or appoint, in order to effect every such sale [or] exchange [or partition] as aforesaid, and that upon any such exchange or exchanges, [partition or partitions,] as aforesaid, it shall and may be lawful for the trustees or trustee for the time being of these presents, to receive or give any sum or sums of money by way of equality of exchange [or partition,] and to mortgage or charge all or any part of the estates hereby settled as aforesaid, or to be purchased or taken in exchange, [or on partition,] under this present power, for or with the money so to be given, with lawful interest for the same, or otherwise to pay the same out of any monies to arise under the exercise of this present power.

Provided also, and it is hereby further agreed and declared between and by the said parties hereto, that when, and as any monies shall be received from any sale, exchange, [or partition,] to be made under the power hereinbefore for that purpose contained, the trustees or trustee for the time being of these presents shall, with all convenient speed, [with the consent of the said \_\_\_\_\_, if living, to be testified by writing under his hand, or after his death, then of the proper authority, and at the discretion of the said trustees or trustee for the time being,] or [at such request, or by such direction, and so testified as aforesaid, or of such proper authority, and at such discretion as the case may be,] lay out and invest such monies in the purchase of other freehold or copyhold messuages, lands, or hereditaments, to be

To invest money received for equality of exchange or partition.

situate, being, or arising somewhere in England or Wales, and as well the hereditaments so to be purchased, as all and every the hereditaments so to be received in exchange, [or upon any such partition,] as aforesaid shall be settled, conveyed, surrendered, and assured to, for, and upon such uses, trusts, intents, and purposes, and under, and subject to such powers, provisos, declarations, and agreements as are in and by these presents limited, expressed, declared, and contained, of and concerning the said hereditaments hereby granted and released, or intended so to be, or as near thereto as the deaths of parties and other contingencies, or the circumstances of the case, will then permit: Provided, nevertheless, and it is hereby further agreed and declared between and by the said parties to these presents, that in the meantime, and until the monies to arise by such sale, or to be received for equality of exchange, [or upon any such partition,] as aforesaid, shall be laid out and invested in a purchase or purchases in the manner hereinbefore mentioned, it shall be lawful for the said trustees or trustee for the time being, [with the consent of the said        during his life, and after his decease, then by and of the proper authority, and at the discretion of the said trustees or trustee for the time being,] or [at such request, or by such direction, and so testified as aforesaid, or of such proper authority, and at such discretion as the case may be,] from time to time, to place out and invest such monies in some or one of the public or parliamentary stocks or funds of Great Britain, or at interest upon government or real securities in England or Wales, and from time to time with such consent, or of such proper authority, and at such discretion as the case may be, to alter, vary, and transfer such stocks, funds, or securities for or into new or other stocks, funds, or securities of the same, or the like nature, as often as such trustees or trustee shall think proper, and that the interest, dividends, and annual produce arising from

such stocks, funds, or securities, shall from time to time go and be paid to such person or persons, and be applied to and for such intents and purposes, and in such manner as the rents and profits of the hereditaments to be purchased therewith would go and be payable, or applicable to, in case such purchase or purchases were actually made.

Provided always, &c., that in case the trustees in and by these presents nominated and appointed, or any or either of them, or any succeeding or other trustees or trustee of the said trust-estate and premises to be appointed, as hereinafter mentioned, shall happen to die, or decline, refuse, neglect, or become incapable or unfit to act in the trusts and powers herein declared and contained, before the same shall have been fully performed or satisfied, then, and so often as the same shall happen, it shall be lawful for the said A. B. and C. D. during their joint lives, and after the decease of either of them, to and for the survivor of them during his or her life, and after the decease of such survivor of them, to and for the surviving trustee or trustees of the trust-premises, the trustee or trustees of which shall so die, desire to be discharged, or refuse, neglect, or become incapable or unfit to act, or go to reside beyond the seas as aforesaid, or in case there shall be no such continuing trustee, then for the retiring trustees or trustee, by any deed or writing to be sealed and delivered, by them, him, or her, in the presence of, and attested by two or more credible witnesses, nominate and appoint any other person or persons to be a trustee or trustees in the place or stead of the trustee or trustees so dying, desiring to be discharged, or refusing, neglecting, or becoming incapable or unfit to act, or going to reside beyond the seas, as aforesaid, and that upon every such appointment all the trust-estate and premises, (the trustee or trustees of which shall so die, desire to be discharged, or refuse, neglect, or become incapable or unfit to act, or go to reside beyond the seas, as aforesaid,) shall be thereupon con-

To appoint  
new trustees  
(in a settlement.)

veyed, assigned, and assured respectively in such manner as that the same may be legally and effectually vested in the newly appointed trustee jointly with such former trustee as shall be living and continuing to act; or in case there shall be no former continuing trustee, then in such new trustee or trustees only, upon and for the trusts, intents, and purposes hereinbefore declared of and concerning the same, or of such of them as shall be then subsisting, undetermined, or capable of taking effect, and that such new trustee or trustees shall and may in all things act in the execution of the trusts and powers herein declared and contained, as fully and effectually as if he or they had been originally by these presents appointed, and as the trustee or trustees in or to whose place he or they shall come or succeed, could or might have done, under or by virtue of these presents.

To appoint  
new trustees,  
(in a will.)

Provided always, and I do hereby direct, that in case the said A. B. and C. D., or either of them, or any succeeding trustee or trustees to be appointed, as hereinafter mentioned, shall happen to die either in my lifetime, or after my decease, or be desirous to be discharged from, or refuse or neglect, or become incapable or unfit to act in the trusts hereinbefore declared, or shall go to reside beyond the seas before the same trusts shall be fully performed or satisfied, then, and so often as the same shall happen, it shall be lawful for the surviving or continuing, or other trustee or trustees of the said trust-premises for the time being, or in case there shall be no continuing trustee, then for the retiring trustees or trustee of their or his own proper authority, by any deed or writing under their or his hands and seals, or hand and seal, to nominate and appoint any other person or persons to be a trustee or trustees in the place or stead of the trustee or trustees so dying, desiring to be discharged, or refusing, neglecting, or becoming incapable or unfit to act, or going to reside beyond the seas, as aforesaid; and that when

and so often as any new trustee or trustees shall be appointed, as aforesaid, all the trust-premises (the trustee or trustees of which shall so die, desire to be discharged, or refuse, neglect, or become incapable or unfit to act, or go to reside beyond the seas as aforesaid) shall thereupon, with all convenient speed, be conveyed, transferred, and assured in such manner as that the same may be legally and effectually vested in the newly appointed trustee or trustees jointly, with the former continuing trustee or trustees of the premises, or in case there shall be no continuing former trustee, then in such newly appointed trustee or trustees only, upon and for the several trusts, interests, and purposes hereinbefore expressed and declared, of and concerning the same, or such of them as shall be then existing, and capable of taking effect, and that all and every such new trustee or trustees shall and may in all respects act and assist in the carrying on and execution of the trusts to which he or they shall be so appointed, as fully and effectually, and with all such powers and authorities whatsoever, as if such new trustee or trustees had been hereby appointed, and as such the trustee or trustees in or to whose place he or they shall come or succeed, might do, or could have done, under or by virtue of this my will.

And I do hereby direct and declare, that it shall be lawful for my said trustees and executors, or other the trustees and executors for the time being of this my will, to compromise, compound for, submit to arbitration, or otherwise settle any debt or debts, sum or sums of money, which shall be owing to or from me on any accounts or reckonings which shall be subsisting and unsettled between me and any other person or persons at the time of my decease, and to accept any security or securities whatsoever for any debt or debts which may be due and owing to me at the time of my decease, and to give or allow such time or times for the payment of any such debt or debts as my said trustees and executors,

To executors  
or trustees  
to compound  
debts, &c.



or trustee and executor, may think proper or expedient, and to abandon any such debt or debts as they or he may deem bad or desperate, or which they or he may think it not advisable to sue for, or endeavour to recover, and without being answerable for any loss which may arise thereby.

## PROVISOS.

Proviso for  
redemption in  
a mortgage.

Provided always, and it is hereby agreed and declared by and between the said parties hereto, that if the said A. B., his heirs, executors, administrators, or assigns, or any of them, shall and do well and truly pay, or cause to be paid, unto the said C. D., his executors, administrators, or assigns, the sum of L. of lawful money of Great Britain, on the] day of next ensuing the date of these presents, with interest for the same after the rate of L. per cent. per annum; then, and in such case,\* and at any time after such payment shall be so made, he the said C. D., his heirs and assigns, shall and will, at the request, costs, and charges of the said A. B., his heirs or assigns, convey and assure the said messuages, &c., expressed to be hereby granted and released, with the appurtenances, unto and to the use of the said A. B., his heirs and assigns, or otherwise, as he or they shall direct or appoint, free from all incumbrances made, done, or committed by the said A. B., his heirs, executors, administrators, or assigns, or any person or persons claiming or to claim by, from, under, or in trust for him, them, or any of them.

Mortgagor to  
enjoy until de-  
fault.

Provided also, &c., that in the meantime, and until

\* In a mortgage for a term, conclude as follows :—“ And immediately after such payment shall be made, as aforesaid, these presents, and the said term of years, hereby created, shall absolutely cease, determine, and be void, any thing herein contained to the contrary thereof in any wise notwithstanding.”

default shall be made in payment of the said sum of L. , or the interest thereof, or of any part thereof respectively, contrary to the aforesaid proviso or agreement for payment of the same, and the true intent and meaning of these presents, it shall and may be lawful for the said A. B., his heirs and assigns, peaceably and quietly to have, hold, use, occupy, possess, and enjoy the said messuages, &c., intended to be hereby released, and to receive and take the rents, issues, and profits thereof, and of every part thereof, to and for his and their own use and benefit, without the lawful let, suit, trouble, denial, eviction, interruption, or disturbance whatsoever, of, from, or by the said C. D., his heirs, executors, administrators, or assigns, or of, from, or by any other person or persons claiming, or to claim, by, from, through, under, or in trust for him, them, or any of them.

Provided always, and it is hereby agreed and declared, between and by the said parties hereto, that in case the said [*mortgagor*,] his heirs, executors, administrators, or assigns, shall and do on demand in writing, for that purpose made on him or them by the said [*bankers*,] or the survivors or survivor of them, or the executors or administrators of such survivor, or other the person or persons for the time being constituting their said firm, or carrying on their said business, or their or his respective assigns, or any of them, or by the manager or chief clerk of the said bank, such demand being made or served on him the said [*mortgagor*,] his heirs, executors, administrators, or assigns, or left at his or their most usual place of abode in England, or without such demand, at any time after the expiration of six calendar months from the date of these presents, well and truly pay, or cause to be paid, unto the said [*bankers*,] or unto the survivors or survivor of them, or the executors or administrators of such survivor, or other the person or persons for the time being constituting their said firm, or carrying on their said business, or their or his respective assigns, all such sum or sums of money, not

Proviso for redemption in a mortgage to bankers for a floating balance.

exceeding in the whole (including the said present balance, in case the same shall then remain unsatisfied) the sum of L. , as for the time being shall be due and owing from the said [*mortgagor*,] his heirs, executors, or administrators, unto the said [*bankers*,] or the survivors or survivor of them, or the executors or administrators of such survivor, or other the person or persons for the time being constituting their said firm, or carrying on their said business, or their or his respective assigns, on or as the balance of the said bank account, whether for or in respect of the said balance so now due from him the said [*mortgagor*] to the said [*bankers*,] as aforesaid, or any part thereof, or for any other moneys which shall or may hereafter be paid or advanced by the said [*bankers*,] or the survivors or survivor of them, or other the person or persons for the time being constituting their said firm, or carrying on their said business, [or by the branch of the said firm,] unto the said [*mortgagor*,] or at his request, or for or by reason of the acceptance or payment by the said banking firm, [or of the said branch thereof,] of the drafts, bills, or promissory-notes of the said [*mortgagor*,] or for or by reason of the said firm discounting any bills of exchange, bearing the name of the said [*mortgagor*,] either as drawer, acceptor, or indorser, which may be subsequently dishonoured, or for or by reason of any payments or advances which may be made by the said [*bankers*,] or the survivors or survivor of them, or other the person or persons for the time being constituting their said firm, or carrying on their said business, on the account of him the said [*mortgagor*,] or for common charges or for interest, such interest being calculated after the rate of L. , on such sum or sums of money as, for the time being, the said firm, however constituted as aforesaid, are, shall, or may be, in advance or balance to or on account of him the said [*mortgagor*,] to be computed as to the said sums, in respect whereof the said banking firm shall be in advance, as aforesaid, from the time or respective times at which the same

shall have been or shall be made until the repayment thereof, or until the same shall be included in such balance, and as to all such balances from the respective times at which the same shall be respectively cast or ascertained, until the respective times at which the same shall be respectively paid and satisfied, or included, as last aforesaid, according to the usual practice of the customers of the said banking firm; then, and in such case, &c.

Provided always, and it is hereby also agreed and declared between and by the parties hereto, that if, at any time hereafter during the continuance of this security, any of the persons for whose life or lives the said messuage and premises, intended to be hereby assigned, are now, or may be hereafter holden, shall die, then, and in such case, and from time to time as often as it shall so happen, it shall and may be lawful to and for the said C. D., his heirs and assigns, to surrender the then subsisting lease wherein any of the lives shall so die, and all his and their estate and interest in the premises therein comprised, to the lord bishop of B. for the time being. And also to and for the said C. D., his executors, administrators, and assigns, to pay all the arrears of rent which shall be then due to the said lord bishop of B. by virtue of such lease or leases, and procure and obtain a new lease or new leases to be made and granted to him the said C. D., his heirs or assigns, of the premises comprised in the lease or leases which shall be so surrendered as aforesaid, for the lives of the then surviving *cestui que vies* in such lease or leases, and of some other person or persons, in such manner as hath been used and accustomed by the said lord bishop of B. for the time being, and to pay the fines, fees, and expenses for, in, about, or relating to the obtaining, making, and granting such new lease or leases as aforesaid. And it is hereby further declared and agreed by and between the said A. B. and the said C. D., and the true intent and meaning of them and of these presents is, that the estate, term, and interest

Proviso for renewal in a mortgage of leaseholds.

Such new lease to stand as a security, as the former had done.

which shall be demised or granted in the said premises in and by every such new lease shall stand and be charged and chargeable with, and remain and be a security to the said C. D., his executors, administrators, or assigns, as well for all the sums of money which he or they shall pay for such arrears of rent, fines, fees, and expenses as aforesaid, and interest for the said sums of money from the time of payment thereof respectively, at the rate of L.        for each L.100 for a year, as for the said sum of L.       , and the interest which shall be then due, or thereafter accrue and become due for the same. And the said premises, and the estate, term, and interest therein, comprised in any such new lease or leases, shall not be redeemed or redeemable by the said A. B., his executors or administrators, until payment to the said C. D., his executors, administrators, or assigns, as well of such sums of money as shall be so paid by him or them as aforesaid, and interest for the same sums of money after the rate of L.        hereinbefore mentioned, as of the said sum of L.       , and the interest thereof.

To take a reduced rate of interest on punctual payment.

Provided always, that if the said [*mortgagor*,] his executors, administrators, or assigns, shall, from time to time, until the repayment of the said principal sum of L.        hereby secured, punctually pay, or cause to be paid, unto the said [*mortgagee*,] his executors, administrators, or assigns, interest after the rate of L.       , &c., for the said sum of L.       , upon or within 28 days next after the said        day of        and        day of        in every year, clear of all deductions whatsoever; then, and in consideration of such punctual payment, the said [*mortgagee*,] his executors, administrators, or assigns, shall and will, from time to time, so often as the same interest shall be paid at or within the days or times aforesaid, accept the reduced rate of interest aforesaid in lieu and full satisfaction of the interest hereinbefore covenanted to be paid, anything hereinbefore contained to the contrary notwithstanding.

Provided always, and it is hereby declared and agreed between and by the said parties to these presents, that in case the said A. B. shall, at any time hereafter, sell and dispose of the estate of the said E. F., now remaining unsold, or the greater part in value thereof, and shall procure the purchaser or purchasers thereof to enter into such covenant as is hereinbefore contained, to and with the said L. M., his heirs, [appointees,] or assigns, for the production to him and them of the said deeds, evidences, and writings; then, and in such case, these presents and the covenant by the said A. B. in that behalf hereinbefore contained, shall be absolutely void and of none effect, and these presents shall be given up to the said A. B. to be cancelled.

Provisos for discharge from covenant for production of title-deeds, on procuring other covenants.

Provided always, &c., that the said, &c., and each and every of them, their, and each, and every of their executors, administrators, and assigns, shall be charged and chargeable only for so much money as they, and each, and every of them shall respectively actually receive by virtue of or under [this my will,] and the trusts aforesaid; and that any one or more of them shall not be answerable or accountable for the other or others of them, nor for the acts, receipts, neglects, or defaults of the other or others of them; but each and every of them for his and her own acts, receipts, neglects, and defaults only; nor shall they, or any or either of them, be answerable or accountable for any banker, broker, or other person with whom or in whose hands any part of the said trust-moneys shall or may be deposited or lodged for safe custody, nor for the insufficiency or deficiency of any security or securities in or upon which the same trust-moneys, or any part thereof, shall or may be placed out or invested, nor for any other misfortune, loss, or damage which may happen in the execution of any of the aforesaid trusts, or in relation thereto, except the same shall happen by or through his, her, or their own wilful neglects or defaults respectively. And also, that they the said, &c., and each and every of them, their, and each, and

Proviso for indemnifying trustees.

every of their executors, administrators, and assigns, shall and may, by, with, and out of the moneys which shall come to their respective hands by virtue of the trusts aforesaid, retain to and reimburse himself, herself, and themselves respectively; and also allow to his, her, and their co-trustees [and co-executors] all loss, costs, damages, and expenses which he, she, or they, or any of them, shall and may respectively suffer, sustain, expend, disburse, be at, or put unto, or which shall or may be to him, her, or them, or any of them, occasioned, for or on account, or by reason or means of the trusts hereby in them reposed, or otherwise howsoever relating thereto.

Proviso to make void limitations in a will where persons dispute the validity thereof.

Provided always, and I do hereby declare my will to be, that if any person or persons to whom any estate or interest is given or limited by this my will, shall, in any court of law or equity, or otherwise, controvert the same, or dispute or call in question the validity thereof, or of any of the estates, limitations, powers, provisos, or dispositions hereby limited, or given, or made, or herein contained, then, and in such case, the estate or estates, interest or interests, limitation or limitations, powers, provisos, and dispositions so hereby limited, given, or made to or in favour of such person or persons so controverting my said will, or disputing or calling in question the validity thereof, as aforesaid, shall cease, determine, and be utterly void, to all intents, constructions, and purposes whatsoever, as if such person or persons was or were naturally dead. And then and from thenceforth such estate or estates, interest or interests, limitations, powers, provisos, and dispositions, shall go and belong to, and be vested in, the person or persons who, by virtue of this my will, shall be next in remainder after the person or persons so controverting or disputing the same as aforesaid; provided he, she, or they shall not controvert or dispute the validity of this my will, or any of the devises, limitations, powers, provisos, or dispositions herein contained, or hereby made.

Provided always, and it is hereby expressly declared, that these presents shall not, nor shall the grant, bargain, and sale hereinbefore made, be construed or deemed to comprise, include, or extend to pass or convey any copyhold or customary lands, tenements, or hereditaments whatsoever, in case any such are or shall happen to be mentioned, described, or contained in the grant, bargain, and sale of freehold lands, tenements, or hereditaments, made, or intended to be made, by these presents; but that, on the contrary, all such copyhold or customary lands and hereditaments as are last hereinbefore mentioned (if any such there are) shall be deemed to be comprised in, and to be equitably bound by, the covenant hereinbefore contained for surrendering the copyhold or customary premises hereinbefore particularly mentioned and described. To the end and intent that no forfeiture may be committed of any copyhold or customary lands, tenements, or hereditaments, by the execution of these presents.

In conveyance of freehold and copyhold premises, to avoid forfeiture of the copyhold.\*

Provided also, and these presents are upon the express condition, that if the said [*lessor*,] his heirs or assigns, or the said [*lessee*,] his executors, administrators, or assigns, or any or either of them, shall be minded or desirous to determine and make void this present demise or lease at the end of the first seven or fourteen years of the said term of twenty-one years, and shall signify such his or their intention to the other or others of them, by notice in writing, to be given to him or them, or left at his or their last or most usual place or places of abode, at least one year before the end of the said seventh or fourteenth year of the said term of twenty-one years; that then, and in such case, from and after the end or expiration of the said seven or fourteen

To determine a lease.

\* This proviso is to be inserted in the deed, when the premises are so blended together that it is difficult to discriminate minutely the copyhold from the freehold, in order to avoid a forfeiture of the copyhold by the mode of conveyance.



Lessor to pay money expended in repairs, if lease be determined by him.

years of the said term, these presents, and the said term hereby created, shall cease, determine, and be utterly void, to all intents and purposes whatsoever, any thing herein contained to the contrary notwithstanding. Provided also, and it is hereby further agreed and declared between and by the said parties hereto, that if the said [*lessor*,] his heirs or assigns, shall determine the said term, under the authority of the last-mentioned proviso or agreement, then, and in such case, he, the said [*lessor*,] his heirs or assigns, shall and will thereupon well and truly pay, or cause to be paid, unto the said [*lessee*,] his executors, administrators, or assigns, any sum or sums of money, not exceeding the sum of L. , which he, the said [*lessee*,] his executors, administrators, or assigns, shall have actually laid out and expended in erecting buildings upon the said demised lands and premises, or which he hath already laid out or expended, or shall lay out or expend, during the first five years of the said term, in repairs, new fencing, draining, and other improvements upon the said demised lands and premises, over and besides the said sum of L.500 hereinbefore covenanted and agreed to be paid by the said [*lessor*] to the said [*lessee*,] on account of such buildings and improvements; such sum or sums of money to be settled by two indifferent persons, one of them to be named by the said [*lessor*,] his heirs or assigns, [or such other person or persons as aforesaid,] and the other of them to be named by the [*lessee*,] his executors, administrators, or assigns, or, in case of disagreement, by a third person to be named by them as umpire.

Proviso to re-enter in case of non-payment of rent, and no distress, &c.

Provided always, nevertheless, and these presents are upon this condition, that if the said respective yearly rents hereby reserved, or any of them, or any part thereof, shall be behind or unpaid by the space of twenty-eight days next after either of the said days or times of payment whereon the same ought to be paid as aforesaid, (being first lawfully de-

manded,) and no sufficient distress or distresses can or may be found and legally taken in or upon the said demised premises whereon to levy the same ; or if the said [*lessee*,] his executors or administrators, shall demise, set, let, assign, lease, or part with the possession of the said demised premises, or any part or parts thereof, *other than except the cottages or tenements already erected and built, or hereafter to be erected and built, by the said [*lessee*]* on the said demised premises, to any person or persons whomsoever, for any term or time whatsoever, without the licence and consent in writing of the said A. B. or his assigns, or the person or persons who for the time being shall or may be entitled as aforesaid, under his or their hand or hands, for that purpose first had and obtained, or if the said [*lessee*,] his executors and administrators, do not in all things well and truly observe, perform, fulfil, and keep all and every the covenants, clauses, provisos, and agreements herein contained, on his and their part and behalf to be paid, kept, done, and performed ; that then, and in any or either of the said cases, it shall and may be lawful to and for the said A. B. and his assigns, [and such other person or persons as aforesaid,] into and upon all and every the said demised premises, or any part thereof, in the name of the whole to re-enter, and the same again to have, hold, repossess, and enjoy, as in his or their former estate and right, and then and from thenceforth the said term hereby granted shall cease and determine, and be utterly void to all intents and purposes, any thing herein contained to the contrary thereof in anywise notwithstanding.

Provided always, and these presents are on the condition, that if the said yearly rent or sum of L. of such lawful money as aforesaid, hereinbefore reserved, or any part thereof, shall be in arrear and unpaid for the space of days next after any of the said days appointed for the payment thereof: *or*,

Proviso for  
re-entry :  
non-payment  
of rent.

- On assigning, &c., without licence. If the said C. D., his executors or administrators, shall, without the consent in writing of the said A. B., his heirs or assigns, assign, set over, underlet, or otherwise part with the said premises, or any part thereof: *or*,
- On neglect to insure against fire. If the said C. D., his executors, administrators, or assigns, or any of them, shall neglect or omit to effect such insurance of the said premises as aforesaid: *or*,
- On bankruptcy, insolvency, &c. If the said C. D. shall commit any act of bankruptcy under any of the statutes now in force relative to bankrupts, so as that a fiat shall be awarded and issued thereupon, or shall take the benefit of the acts now in force relative to insolvent debtors, or shall make any compromise with his creditors for less than twenty shillings in the pound, or shall suffer the said lease to be taken in execution under any writ of execution issuing out of any court of record in Great Britain, Ireland, or Wales: *or*,
- On commission of waste. If the said C. D., his executors, administrators, or assigns, shall commit, or permit and suffer any spoil, destruction, decay, or waste, in or about the said demised premises, or any part thereof, to the value or amount of L. , in any one year, and shall not effectually amend, repair, or make satisfaction for the same, within one calendar month next after notice thereof in writing, given to him or them for that purpose, under the hand of the said A. B., his heirs or assigns: *or*,
- On breach of any covenant. If the said C. D., his executors, administrators, or assigns, shall neglect or fail to perform, or be guilty of any breach, non-performance, or non-observance of any of the covenants, clauses, provisos, and agreements, by him or them to be observed, kept, and performed, according to the true intent and meaning of the same respectively:
- Then, and in every or any of such cases, it shall be lawful for the said A. B., his heirs and assigns, in and upon the said premises hereby demised, and every part thereof, to enter and to hold the same

free and discharged of and from the said term hereby demised, and of and from all and every the covenants, obligations, provisos, and agreements hereinbefore contained.

Provided always, and it is hereby agreed and declared between and by the parties to these presents, that when the trusts hereinbefore declared of and concerning the said term of        years shall be fully performed and satisfied, or shall become unnecessary or incapable of taking effect, and all costs and charges of the said [*trustees*,] and each of them, and their, and each of their executors, administrators, and assigns, attending the same, (if any,) shall be fully paid off and discharged, then, and in such case, and immediately thereupon, the said term of        years shall subject, and without prejudice to any disposition which shall have been made of the premises comprised therein for the purpose aforesaid, absolutely cease, determine, and be void.

Proviso for  
the cessor of a  
term.

And this indenture further witnesseth, and the said [*annuitant*] doth hereby, for himself, his executors, administrators, and assigns, covenant, promise, and agree with and to the said [*grantor*,] his executors, administrators, and assigns, (or) [provided always, &c.,] that, in case the said [*grantor*,] his executors, administrators, or assigns, shall at any time hereafter be minded or desirous of repurchasing the said annuity, yearly rent, or sum of L.       , and of such their or his intention shall give notice in writing unto the said [*annuitant*,] his executors, administrators, or assigns, that then, and in that case, he, the said [*annuitant*,] his executors, administrators, or assigns, shall and will, at the end of three calendar months from the day on which such notice shall be given as aforesaid, on receiving of and from the said [*grantor*,] his heirs, executors, administrators, or assigns, all sum and sums of money whatsoever which shall be then due for, or on account of, the arrears of the said annuity, yearly rent, or sum of L.       , up to the day of repurchasing the same, and

Provision for  
the repur-  
chase of an  
annuity.

all the sum and sums of money which shall then be due for, and on account of, any costs, charges, or expenses, incurred by the non-payment of the said annuity, accept and take for the repurchase thereof the sum of L. : And the said [*annuitant,*] his executors, administrators, or assigns, shall and will thereupon, at the costs and charges of the person or persons requiring the same, release, assign, or otherwise dispose of the said annuity, yearly rent, or sum of L. , which shall be so redeemed or repurchased, and the said [*manors, hereditaments,*] and premises, and all other securities for the same, unto such person or persons as he or they shall in that behalf nominate and appoint, and acknowledge, or cause to be acknowledged, satisfaction on the record of the said judgment that shall be entered up on the said warrant of attorney as aforesaid, and do every other act and deed or thing necessary or advisable for the avoiding, releasing, assigning, vacating, and discharging as well the said annuity, yearly rent, or sum of L. , as the several securities given for the payment of the same as aforesaid, as by the said [*grantor,*] his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably advised, devised, and required.

## COVENANTS.

From one person or joint tenants.

And [each of them] the said doth for himself, his heirs, executors, and administrators, grant, covenant, promise, and agree, to and with the said his heirs<sup>d</sup> and assigns, by these presents, in manner following ; (that is to say,)

Tenants in common.

And the said A. B. doth hereby, for himself, his heirs, executors, and administrators, and for the

<sup>d</sup> Where the covenants affect personalty, as in conveyance of leaseholds, or for payment of mortgage-money, the words executors and administrators must be inserted for heirs, with respect to the covenantee.

estate, title, possession, and further assurance of the one undivided moiety of him, the said A. B., of and in the said                      and other hereditaments intended to be hereby released, and not further or otherwise, and the said C. D. doth hereby, &c., as before.

And the said A. B. doth hereby for himself, his heirs, executors, and administrators, and for the estate, title, possession, and further assurance, during his life only, of the said messuage, lands, and other hereditaments hereinbefore released, or intended so to be. And the said C. D. doth hereby for himself, his heirs, executors, and administrators, and for the estate, title, possession, and further assurance of the same messuage, lands, and other hereditaments in remainder or reversion, in fee-simple, immediately expectant on the decease of the said A. B., grant, &c.

Tenant for life  
and remainder-  
man.

And the said A. B., so far as respects the one undivided third part, or share of himself, and the said E., his wife, in her right of or in the messuage, lands, and other hereditaments hereinbefore related, or intended so to be, doth hereby for himself, his heirs, executors, and administrators, and the said C. D., &c., as above.

From persons  
seised in right  
of their wives.

And each and every of them, the said                      so far only as relates to his own acts and deeds, and not as to the acts or deeds of the others, or any other of them, doth hereby for himself, his heirs, executors, and administrators, covenant and declare with and to the said                      his heirs, executors, administrators, and assigns, respectively, that they the said have not, nor hath any of them respectively, &c.

From several  
persons in a  
covenant  
against in-  
cumbrances.

### *For Title in Purchase Deeds.*

AND the said [*vendor*] for himself, his heirs, executors, and administrators, [*if the wife is a party*, "for himself and the said E., his wife, his and her heirs, &c.,"] doth hereby grant, covenant, promise, and agree, to and with the said [*purchaser*,] his heirs [*appointees*] and assigns, in manner following: (that

That vendor is  
seised.

is to say,) that for and notwithstanding\* any act, deed, matter, or thing by him the said [*vendor*,] (and *E. his wife, or either of them*,) or, "by the said S. M., deceased," &c. [*the covenants should go up to the last purchase-deed*,] or any person or persons lawfully claiming by, from, under, or in trust for him [*them*,] made, done, committed, executed, or suffered, to the contrary, he the said [*vendor*] now is [*or, they the said vendor and E. his wife are, or one of them is*] lawfully, rightfully, and absolutely seised of, or well entitled to the messuage, &c., hereby released, or intended so to be, and every part thereof, for an absolute and indefeasible estate of inheritance in fee-simple, [*or, for and during the natural life of, &c.; or, if a remainder or reversion, after the word entitled, say, "To the remainder or reversion of him the said [vendor], expectant as aforesaid, of and in, &c.;" if a moiety or other portion, say, "Of the undivided moiety, half-part, or share, (or undivided third part or share,) of him the said (vendor,) of and in, &c."*] without any condition, use, trust, power of revocation, or other restraint, cause, matter, or thing whatsoever, to alter, defeat, incumber, revoke, or make void the same.<sup>†</sup>

Good right to  
convey. 11

And that (*for and notwithstanding any such act, deed, matter, or thing, as aforesaid*) he the said [*vendor*] now hath in himself [*or, they the said (vendor) and E. his wife, now have in themselves, or one of them hath in himself or herself,*] good right, full power, and lawful and absolute authority, to grant, release, and convey the said, &c., [*see preceding covenant*,] with the appurtenances, unto and to the use

\* These words at the commencement of the covenants for title have been held to qualify them all, without a repetition of them at the commencement of the subsequent usual covenants. (*Hesse v. Stevenson*, 3 Bos. & P. 574.)

† This covenant is seldom inserted in small purchases, the same being comprised in the next covenant, that the vendor has good right to convey.

of the said [*purchaser*,] his heirs and assigns, [for and during the natural life of, &c.,] in manner aforesaid, and according to the true intent and meaning of these presents.<sup>c</sup>

And also, that it shall and may be lawful for the said [*purchaser*,] his heirs and assigns,<sup>b</sup> from time to time, and at all times hereafter, peaceably and quietly to enter upon, have, hold, occupy, possess, and enjoy the said, &c., [*see the first covenant*,] hereby released, or intended so to be, with their appurtenances, and to receive and take the rents, issues, and profits thereof, and every part thereof, [for and during the natural life of, &c.,] without any let, suit, trouble, eviction, claim, or demand whatsoever, of or by the said [*vendor*,] or any person or persons lawfully claiming from, under, or in trust for him [*or, them; or, by, from, or under; or, in trust for the said, &c.*]

For quiet enjoyment.

And<sup>d</sup> that free and clear, and freely and clearly acquitted, exonerated, and for ever discharged or

Free from incumbrances.

<sup>c</sup> This covenant may be shortened thus: "He the said [*vendor*] now hath in himself good right to grant, release, and convey the said hereditaments hereby released, with the appurtenances, unto the said [*purchaser*,] his heirs and assigns, in manner aforesaid, according to the true intent and meaning of these presents."

<sup>b</sup> Shortened thus: [*after the word assigns, say*,] "immediately after the execution of these presents, to enter upon and enjoy the said hereditaments hereby released, with the appurtenances, and to receive and take the rents and profits thereof, for his and their own use and benefit, without any interruption whatsoever from or by the said [*vendor*,] or his heirs, or any person claiming through or in trust for him."

<sup>d</sup> Shortened thus: "And that free and clear, or otherwise, by the said [*vendor*,] his heirs, executors, or administrators, well and sufficiently indemnified of, from, and against all estates, titles, troubles, liens, charges, and incumbrances whatsoever, made, done, or permitted by the said [*vendor*,] or any person claiming through or in trust for him."



otherwise, by the said [*vendor*,] his heirs, executors, and administrators, well and sufficiently saved, kept harmless, and indemnified, of, from, and against all former and other gifts, grants, bargains, sales, jointures, dowers, uses, trusts, entails, wills, statutes, judgments, executions, rents, sums of money, forfeitures, re-entries, and all other estates, titles, troubles, charges, and incumbrances whatsoever, had, made, executed, or suffered by the said [*vendor*,] [or the said E. his said wife,] or any person or persons lawfully claiming, or to claim, from, under, or in trust for him, her, or them, or any of them respectively.<sup>k</sup>

And for further assurance.

And further, that he, the said [*vendor*,] and his heirs, [or, that they, the said [*vendor*,] and E. his wife, and their heirs,] and all and every other person and persons whosoever, having or claiming, or who shall or may have or claim, any estate, right, title, or interest, at law or in equity, in, to, or out of the said, &c., [see *first covenant*,] hereby released, or intended so to be, or any of them, or any part thereof, from, under, or in trust for him, the said [*vendor*,] [or, from, under, or in trust for the said [*vendor*,] and E. his wife, or either of them, or the said, &c.,] shall and will, from time to time, and at all time hereafter, upon every reasonable request, and at the proper costs and charges of the said [*purchaser*,] his heirs, [*appointees*,] or assigns, make, do, acknowledge, and execute, or cause or procure to be made, done, acknowledged, and executed, all and singular such further and other lawful and reasonable acts, deeds, things, conveyances, and assurances, in the law whatsoever, for the further, better, and more absolutely granting, conveying, and assuring the said, &c., here-

<sup>k</sup> Any charges affecting the premises should be here excepted, as, "other than and except the said mortgage-debt, or sum of L.      due to the said      on the security of the said indenture of      and the term of years thereby created therein as aforesaid."

by released, or intended so to be, and every part thereof, with the appurtenances, unto and to the use of the said purchaser, his heirs and assigns, [or to the uses, upon the trusts, and with the power hereinbefore declared and contained, of and concerning the same, for the benefit of the said *[purchaser,]* his heirs or assigns,] as by him or them, or his or their, or any of their counsel in the law, shall be reasonably devised, or advised, or required.<sup>1</sup>

And the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant and declare to and with the said, &c., his [heirs,] executors, administrators, and assigns,<sup>m</sup> that he, the said, &c., hath not at any time heretofore made, done, committed, executed, or suffered, or caused or procured to be made, done, committed, executed, or suffered, any act, deed, matter, or thing whatsoever, whereby the said mesuages, &c., hereinbefore described, and hereby [assigned,] or intended so to be, [or the said term of five hundred years,] are, is, can, shall, or may be [surrendered, forfeited, impeached,] charged, or incumbered, in title, estate, or otherwise howsoever.

Covenant by party, that he hath not incumbered.

And the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said C. D., his

Covenants for title in a conveyance of freehold and leasehold premises.

<sup>1</sup> Shortened thus: "And moreover, that he the said *[vendor]* and his heirs, and all persons whosoever, claiming through or in trust for him, shall and will, at the request and charges of the said *[purchaser,]* his heirs and assigns, make and perfect all further assurances that may be necessary for the more effectually conveying the said hereditaments hereby released, with the appurtenances, unto the said *[purchaser,]* his heirs and assigns, according to the true intent and meaning of these presents, as by the said *[purchaser,]* his heirs or assigns, or his or their counsel in the law, shall be devised."

<sup>m</sup> Shortened thus: "That he the said *[A. B.]* hath not made, done, or committed any act, deed, matter, or thing whatsoever, whereby the said hereditaments may be in any manner incumbered."

Hath good  
right to con-  
vey.

heirs, executors, administrators, and assigns, in manner following; that is to say, that for and notwithstanding any act, deed, matter, or thing whatsoever by him the said A. B. had, made, done, committed, or suffered to the contrary, he the said A. B. now hath in himself good right, full power, and lawful and absolute authority, to grant, bargain, sell, release, and confirm the said freehold messuages, and other hereditaments hereinbefore granted and released, or intended so to be, with the appurtenances thereunto belonging, unto and to the use of and in trust for the said C. D., his heirs, appointees, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents. And also to assign the said leasehold messuages and other premises hereinbefore assigned, or intended so to be, with the appurtenances thereunto belonging, unto the said C. D., his heirs and assigns, for and during all the residue and remainder, now to come and unexpired, of the term or terms for which the same premises respectively are holden, in manner aforesaid, and according to the true intent and meaning of these presents.

For quiet  
enjoyment.

And also, that it shall and may be lawful to and for the said C. D., his heirs, [appointees,] and assigns, from time to time, and at all times hereafter, peaceably and quietly to enter into and upon, and to have, hold, occupy, possess, and enjoy the said freehold and leasehold hereditaments and premises hereinbefore granted, released, and assigned respectively, or intended so to be, and every of them, and every part thereof, and to receive and take the rents and profits thereof, and of every part thereof respectively, to and for his and their own use and benefit, without the lawful let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever, of or by him, the said A. B., his heirs, executors, or administrators, or by any other person or persons whomsoever, lawfully claiming or to claim, by, from, under, or in any trust for him, them, or any of them, *or the said I. B. or F. B. deceased, or either of them,*

[*if it be the conveyance of an equity of redemption, say, "except the said I. W., his heirs, executors, administrators, and assigns, in respect of his said mortgage."*] AND THAT free and clear, and freely Free from incumbrances. and clearly, and absolutely exonerated, released, and for ever discharged, or otherwise, by the said A. B., his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all and all manner of former and other gifts, grants, bargains, sales, mortgages, surrenders, assignments, jointures, dowers, right and title of dower, free bench, uses, trusts, entails, wills, debts, recognizances, judgments, executions, rents, arrears of rent, sum and sums of money, annuities, re-entries, and all other estates, titles, troubles, charges, and incumbrances whatsoever, either already or hereafter to be had, made, executed, or suffered by the said A. B., his heirs, executors, or administrators, or by any other person or persons whomsoever, lawfully claiming or to claim, by, from, under, or in trust for him, them, or any of them, *or the said I. B. or F. B. deceased, or either of them, (except as aforesaid.)* AND FURTHER, that he, the said A. B., his For further assurance. heirs, executors, administrators, and assigns, and all and every other person or persons, having or lawfully claiming, or who shall or may have or lawfully claim any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, out of, or upon the said freehold and leasehold messuages and premises, hereinbefore granted and released and assigned respectively, or intended so to be, with their appurtenances, or any of them, or any part thereof respectively as aforesaid, *(except as aforesaid,)* shall and will, from time to time, and at all times hereafter, at every reasonable request, and at the costs and charges in the law of the said C. D., his heirs, appointees, executors, administrators, and assigns respectively, make, do, acknowledge, perform, and execute, or cause or procure to be made, done,

acknowledged, performed, and executed, all and every such further and other lawful and reasonable acts, deeds, matters, and things, conveyances, surrenders, assignments, and assurances in the law whatsoever, for the further, better, and more perfectly and absolutely granting, conveying, and assuring the said freehold messuages and other hereditaments, hereinbefore granted and released, or intended so to be, unto and to the use of the said C. D., his heirs, appointees, and assigns; and for assigning and assuring the said leasehold, messuages, and premises hereinbefore assigned, or intended so to be, with their appurtenances, unto the said C. D., his executors, administrators, or assigns, for all the residue and remainder which shall be then to come and unexpired of the term or terms of years then subsisting, or to be granted by way of renewal therein respectively, according to the true intent and meaning of these presents, as by the said C. D., his heirs, executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised, or advised, and required.

Covenant for  
the produc-  
tion of deeds.

He the said W. B. for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the said J. M., his heirs and assigns, in manner following; that is to say, that he the said W. B., his heirs, executors, administrators, or assigns, or some or one of them, (*unless prevented by fire or some other inevitable accident,*) shall and will, from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said J. M., his heirs, [appointees,] or assigns, produce and show forth, or cause or procure to be produced and shown forth, in England, and not elsewhere, unto the said J. M., his heirs, [appointees,] or assigns, or any of them, or his, their, or any of their agents or attorneys, or at any trial, hearing, commission, or examination, in or directed by any court or courts of law or equity in England, all and every or any of the several deeds,

evidences, and writings, mentioned or comprised in the schedule to these presents, (which relate to and concern the estate and title of and to not only the and other hereditaments hereby or intended so to be, but also certain other hereditaments of greater value, of or belonging to him the said W. B.,) when and as often as there shall be occasion to inspect or produce the same or any of them, for the maintenance, making out, defending, or proving the estate, right, title, property, or possession of him the said J. M., his heirs, appointees, or assigns, or his or their trustee or trustees, or any of them, in or to the and other hereditaments hereinbefore or intended so to be, or any part thereof.

AND ALSO, that he the said W. B., his heirs, executors, administrators, or assigns, or some or one of them, shall and will, from time to time, and at all times, upon request for that purpose, (*unless prevented by fire or other inevitable accident, as aforesaid,*) give or deliver unto the said J. M., his heirs, [appointees,] or assigns, but at the proper costs and charges of the person or persons requesting the same, a copy or copies, attested or unattested, of, or extracts from, all or any part of each or any of the same deeds, papers, and writings, and suffer such copies or extracts to be examined and compared with the originals, either by the said J. M., his heirs, appointees, or assigns, or by any person or persons whom he or they shall appoint, and also shall and will in the meantime keep and preserve the said deeds, evidences, and writings, and every of them, safe, whole, uncanceled and undefaced, all losses and damages by fire or other inevitable accident as aforesaid only excepted.

And for the delivery of copies.

And the said (*purchaser*) doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said (*vendor*), his heirs, executors, and administrators, that he the said (*purchaser*), his heirs, executors, administrators, and assigns, shall and will well and truly pay, or cause to

Covenant from the purchaser of an equity of redemption for payment of the mortgage money;

and to indemnify the vendor.

be paid, unto the said (*mortgagee*,) his executors, administrators, or assigns, the said principal sum of, &c., secured to him by the said recited mortgage, and all interest henceforth to grow due thereon; and also shall and will, from time to time, and at all times hereafter, save, defend, keep harmless and indemnified, the said (*vendor*,) his heirs, executors, and administrators, and his and their lands, tenements, goods, and chattels, of, from, and against the said mortgage, debt, or sum of, &c., and the interest henceforth to grow due for the same, as aforesaid; and also of, from, and against all and all manner of actions, suits, and proceedings, at any time hereafter brought or prosecuted against the said (*purchaser*,) his heirs, executors, administrators, and assigns, and all costs, charges, and damages, which he or they shall be put unto, by reason, or on account, or in respect of the non-payment thereof, or of the covenant in the said mortgage contained, for payment of the same.

Covenant in an assignment of leaseholds.

That lease is valid.

And the said A. B. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree to and with the said C. D., his heirs, executors, administrators, and assigns, [or "his executors, administrators, and assigns,"] in manner following; (that is to say,) *that for and notwithstanding any act, deed, matter, or thing whatsoever*, at any time heretofore made, done, committed, executed, or knowingly omitted or suffered by him to the contrary, the said hereinbefore recited indenture, of the            day of           , is a good and valid *demise and lease* in all respects, both at law and in equity, and is not in any manner forfeited, surrendered, or otherwise become void or voidable. *And also that for and notwithstanding any such act, deed, matter, or thing, as aforesaid*, he the said A. B. hath in himself good right, full power, and lawful and absolute authority, to assign the said premises hereby assigned, or intended so to be, according to the true intent and meaning of these presents.

And further, that it shall and may be lawful to and for the said C. D., his heirs [or his executors, administrators,] and assigns, from time to time, and at all times hereafter during the continuance of the [said term of        years, (or) the lives of the said E. F. and G. H.,] peaceably and quietly to enter into, and to have, hold, use, occupy, possess, and enjoy the said messuages, tenements, hereditaments, and premises hereinbefore described, and to receive and take the rents and profits thereof, and of every part thereof, to and for his and their own use and benefit, for all the residue of the said term of years, [or of the lives of the said E. F. and G. H.,] without any lawful let, suit, trouble, denial, eviction, or interruption, of, from, or by the said A. B., or of, from, or by any other person or persons lawfully claiming, or to claim from, by, under, or in trust for them or any of them.

Quiet enjoyment.

And that free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise, by the said A. B., his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all former and other gifts, grants, bargains, leases, mortgages, estates, titles, troubles, charges, and incumbrances whatsoever, other than and except the yearly rents reserved by the said indenture of lease as aforesaid, and the covenants, provisos, and agreements therein contained on the lessee's or tenant's part to be paid, observed, and performed.

Free from incumbrances.

And moreover, that he the said A. B., his heirs, executors, and administrators, [or his executors and administrators, *in case of chattel-leases,*] and every other person having, or lawfully or equitably claiming, or who shall or may have, or lawfully or equitably claim any estate, right, title, trust, or interest in, to, or out of the said messuages, and premises hereby assigned, or intended so to be, or any part thereof, from, by, under, or in trust for him, them, or any of them, shall and will, from time to time, and

For further assurance.



at all times hereafter during the continuance of the said lease or term, on every reasonable request, and at the proper costs and charges in the law of the said C. D., his heirs, [or his executors, administrators,] and assigns, make, do, and execute, or cause or procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, and things, assignments, conveyances, and assurances in the law whatsoever, for the better, more perfectly, and absolutely assigning and assuring the said messuages and premises unto the said C. D., his heirs [or his executors, administrators,] and assigns, during the lives of the said, &c., and the life of the survivor of them, [or, during all the rest and residue of the said term of            years therein,] but subject as aforesaid, as by the said C. D., his heirs [or his executors, administrators,] and assigns, or his or their counsel in the law, shall be reasonably advised, devised, or required.

By assignor  
that rent, &c.  
are paid.

And further, that the rent in and by the said recited indenture of lease reserved, and the covenants, conditions, and agreements therein contained, and on the lessee's part to be paid, kept, observed, and performed, and all taxes, rates, and assessments, due and payable by the occupier of the said premises, are and have been well and truly paid, kept, done, performed, and fulfilled up to the            day of            last.

To pay rent  
and perform  
covenants.

And the said C. D. doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said A. B., his heirs, executors, and administrators, in manner following; (that is to say,) that he the said C. D., his executors, administrators, and assigns, during the continuance of the said demise, shall and will pay the said rent in and by the said indenture of lease reserved and contained, and perform and keep all and singular the covenants, conditions, and agreements therein contained, and which from the said day of            last, by and on the part of the tenant or assignee of the said premises, are or ought to be paid, performed, and kept, according to the purport

and true intent and meaning of the said recited indenture of lease.

And shall and will from time to time, and at all times during the continuance of the said demise, save, defend, keep harmless, and indemnified, the said A. B., his heirs, executors, and administrators, and his and their lands and tenements, goods and chattels, of and from the same rents, covenants, and agreements, and every breach, default, or neglect, of or in payment or performance thereof respectively. And of, from, and against all actions, suits, costs, damages, and expenses whatsoever, which he or they, or any of them, shall or may pay, bear, or sustain, or which shall or may arise or be occasioned by reason of the non-payment of the said rent, or the non-performance or non-observance of the said covenants or agreements, or any of them respectively.

Covenant of indemnity.

### *In Mortgage Deeds.*

And the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said C. D., his executors, administrators, and assigns, that he, the said A. B., his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, unto the said C. D., his executors, administrators, or assigns, [the sum of L. , of lawful money of Great Britain and Ireland, on the day of now next running, together with interest thereon after the rate of per cent. per annum, without any deduction or abatement whatsoever, according to the true intent and meaning of these presents,] (or) [the aforesaid sum of L. , and interest, after the rate in the parts and shares, and on or at the days or times in the aforesaid proviso and agreement mentioned for payment thereof, according to the true intent and meaning of these presents.]

For payment of principal and interest.

\* Another form by reference to the proviso for redemption.

\* This form is not so convenient as the other, as, in the event of an action being brought upon it, the proviso must be set out in the declaration.

For payment  
of the pre-  
miums on a  
policy of as-  
surance.

" And also, that he, the said A. B., his heirs, executors, or administrators, shall and will, so long as the said sum of L. , and the interest thereof, or any part thereof, shall remain unpaid, duly and punctually pay, or cause to be paid, the yearly premiums to become payable upon the said policy of assurance hereby assigned as aforesaid, and also do every other act necessary to keep the said policy on foot, and in full force; and that if the said A. B., his heirs, executors, or administrators, shall refuse or neglect so to do, then the said C. D., his executors, administrators, or assigns, shall and may, and he and they are hereby authorized to pay such premium, or if the said policy shall be forfeited, or shall expire, to effect another in lieu thereof, and to keep up and renew the same from time to time in like manner, and thereupon, and in every such case, the said messuage and other premises shall stand and be charged, and the said A. B. doth hereby charge the same, with the payment, as well of the aforesaid sum of L. hereby secured as aforesaid, and the interest thereof, as also of the sum or sums of money to be advanced in payment of such premium or premiums, or in effecting any such new policy or policies as aforesaid, with interest for the same after the rate of L. per cent. per annum, from the time or respective times of advancing the same until the repayment thereof, and the same several mortgaged premises shall not be redeemed or redeemable, until such last mentioned moneys and interest shall be fully satisfied.

For title in  
a mortgage  
in fee.

And the said A. B. doth hereby for himself, his heirs, executors, and administrators, grant, covenant, promise, and agree with and to the said C. D., his heirs and assigns, by these presents, in manner following; that is to say, that he, the said A. B., now is lawfully, rightfully, and absolutely seised of the said messuage, &c., hereinbefore described, and intended to be hereby granted and released, with their appurtenances, and the inheritance thereof in fee-simple,

without any manner of condition, use, trust, power, or any other restraint, cause, matter, or thing whatsoever, to alter, change, charge, revoke, make void, lessen, or determine the same.

And also, that he, the said A. B., now hath in himself <sup>Right to con-vey.</sup> good right, full power, and lawful and absolute authority to grant, release, and convey the said messuages, &c., and all and singular other the premises hereinbefore described, and intended to be hereby granted and released, with their appurtenances, unto and to the use of the said C. D., his heirs and assigns, in manner aforesaid, according to the true intent and meaning of these presents.

And further, that, in case default shall happen to be <sup>To enjoy, in case of default.</sup> made in payment of the said sum of L. , or of the interest thereof, or of any part thereof respectively, at or upon the respective days or times hereinbefore appointed for payment thereof respectively, contrary to the true intent and meaning of these presents, it shall and may be lawful for the said C. D., his heirs and assigns, from time to time, and at all times thereafter, to enter into and upon, and to have, hold, use, occupy, possess, and enjoy the said messuages, &c., hereinbefore described, and intended to be hereby granted and released, with their rights, members, and appurtenances, and to receive and take the rents, issues, and profits thereof, and of every part thereof, to and for his and their own use and benefit, without any let, suit, interruption, or disturbance whatsoever, of, from, or by the said A. B., his heirs and assigns, or any other person or persons whomsoever.

And that free and clear, and freely and clearly <sup>Free from incumbrances.</sup> acquitted, exonerated, and discharged, or otherwise, by the said A. B., his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, jointures, dowers, uses, trusts, wills, entails, statutes, recognizances, judgments, extents, executions, sum and sums of

money, and of, from, and against all and singular other estates, titles, troubles, charges, and incumbrances whatsoever.

For further  
assurance.

And moreover, that he, the said A. B., and his heirs, and every other person having or lawfully or equitably claiming, or who shall or may have or lawfully or equitably claim any estate, right, title, or interest in, to, or out of the said messuages or tenements, &c., hereinbefore described and intended to be hereby granted and released, or any part thereof, shall and will from time to time, and at all times hereafter, at the request of the said C. D., his heirs, executors, administrators, or assigns, but at the costs and charges of the said A. B., his heirs, executors, administrators, or assigns, make, do, acknowledge, perform, and execute, or cause and procure to be made, done, acknowledged, performed, and executed, all such further and other lawful and reasonable acts, deeds, matters, conveyances, and assurances in the law whatsoever, for the better, and more perfectly and absolutely conveying and assuring the said messuage, &c., hereinbefore described, and intended to be hereby released, with their rights, members, and appurtenances, unto and to the use of the said C. D., his heirs and assigns, as by the said C. D., his heirs, executors, administrators, or assigns, or his or their counsel learned in the law, shall be reasonably advised, devised, or required.

For title in a  
mortgage for  
a term.

And the said A. B. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree, to and with the said C. D., his executors, administrators, and assigns, by these presents, in manner following; (that is to say,) that he, the said A. B., now hath in himself good right, full power, and lawful and absolute authority, to demise and grant, [limit, and appoint,] the said messuage, tenement, &c., intended to be hereby demised, and every part thereof, with the appurtenances, unto the said C. D., his executors, administrators, and assigns, for and during the said term of five hundred

years, in manner aforesaid, and according to the true intent and meaning of these presents.

And also, that if default shall be made in payment of the aforesaid sum of L. , and the interest thereof, or any part thereof respectively, contrary to the aforesaid covenant for the payment thereof, then, and in such case, it shall and may be lawful to and for the said C. D., his executors, administrators, and assigns, from time to time, and at all times thereafter, peaceably and quietly to enter into, and have, hold, use, occupy, possess, and enjoy, all and singular the said messuage, &c., intended to be hereby demised, with the appurtenances, and to receive and take the rents, issues, and profits thereof, for and during all the rest, residue, and remainder of the said term of five hundred years which shall be then to come and unexpired, without the lawful let, suit, trouble, hinderance, interruption, or denial, of or by the said A. B., his heirs, executors, or administrators, or any other person or persons whomsoever. For quiet enjoyment.

And that free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise, by the said A. B., his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all former and other gifts, grants, leases, mortgages, jointures, dowers, uses, trusts, wills, entails, statutes, recognizances, judgments, extents, executions, forfeitures, estates, charges, and incumbrances whatsoever, had, made, done, committed, or suffered, or to be had, made, done, committed, or suffered, by the said A. B., his heirs or assigns, or by any other person or persons whomsoever, lawfully claiming, or to claim, by, from, under, or in trust for him or them. Free from incumbrances.

AND MOREOVER, that if default shall be made in payment of the aforesaid sum of L. , and the interest thereof, or any part thereof respectively, contrary to the aforesaid covenant for that purpose, then, and in such case, he, the said A. B., and his heirs, and all and every other person or persons whomsoever, For further assurance.

having or claiming, or who shall or may have or claim, any lawful or equitable estate, right, title, or interest, of, in, to, or out of the said messuage, &c., intended to be hereby demised, or any part thereof, by, from, under, or in trust for him or them, shall and will, from time to time, and at all times thereafter, at the reasonable request of the said C. D., his executors, administrators, and assigns, but at the costs and charges in the law of the said A. B., his heirs, executors, administrators, or assigns, make, do, acknowledge, and execute, or cause and procure to be made, done, acknowledged, and executed, all and every such further and other lawful and reasonable acts, deeds, matters, things, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely granting and demising the same messuage, &c., with the appurtenances, unto the said C. D., his executors, administrators, and assigns, for all the rest, residue, and remainder of the said term of five hundred years, which shall be then to come and unexpired, as by the said C. D., his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised or advised and required.

For payment  
of floating balance in a  
mortgage to  
bankers.

That he, the said A. B., his heirs, executors, administrators, or assigns, shall and will, upon demand in writing being made on him or them for that purpose by the said [*bankers*,] or the survivors or survivor of them, or the executors or administrators of such survivor, or other the person or persons for the time being, constituting their said firm, or carrying on their said business, or their or his respective assigns, or any of them, (such demand being made and served as aforesaid,) well and truly pay, or cause to be paid, unto the said [*bankers*,] or unto the survivors or survivor of them, or the executors or administrators of such survivor, or other the person or persons for the time being, constituting their said firm, or carrying on their said business, or their or his assigns, all such sum or sums of money (not exceeding such limit as hereinbefore mentioned) as for

the time being shall be due and owing from him, the said A. B., his heirs, executors, or administrators, unto the said [*bankers*,] on or as the balance of their said account with them, however arisen or constituted, as aforesaid, without any deduction or abatement whatsoever, and in manner hereinbefore appointed for the payment thereof, according to the aforesaid proviso for redemption, and the true intent and meaning of these presents.

### *In Leases.*

And the said [*lessee*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said A. B., his [<sup>For payment of rent.</sup> \*heirs and] assigns, [†and such other person or persons who shall or may be successively entitled to the freehold or inheritance of the said demised premises in possession as aforesaid,] in manner following; (that is to say,) that he, the said [*lessee*,] his executors, administrators, and assigns, shall and will, from time to time, and at all times during the continuance of the said term of twenty-one years, well and truly pay, or cause to be paid, unto the said A. B., his heirs and assigns, [and such other person or persons as aforesaid,] the said yearly rent or sum of L. , and the other rents hereby reserved, in the proportions, and on the days hereinbefore mentioned for payment thereof, free and clear of all taxes, charges, impositions, and deductions whatsoever.

And also shall and will, at all times during the continuance of the said term, bear, pay, and discharge all such rates, taxes, and assessments, (land-tax only excepted,) whether parliamentary, parochial, or otherwise, as now are or hereafter, during the continuance of the said term, may be rated, charged, or assessed on the said demised premises, or on any part thereof, or on the said A. B., his heirs, or assigns, in respect thereof. <sup>To pay taxes.</sup>

\* In a lease by the owner of the fee.

† In a lease under a power by a tenant for life.



To repair.

And also, that he, the said [*lessee*,] his executors, administrators, and assigns, shall and will, from time to time, and all times during the continuance of the said term, when and so often as occasion shall be, at his and their own proper costs and charges, well and sufficiently repair, maintain, amend, scour, cleanse, preserve, and keep in repair, the said messuage, tenement, or farm-house, and all other the houses, out-houses, edifices, buildings, barns, stables, dove-houses, gates, rails, pales, stiles, hedges, fences, and mounds, in, upon, or belonging to the said hereby demised premises, [(or) the said messuage, or tenement, and premises, hereby demised, or intended so to be, and every part thereof, with the walls, fences, ceilings, floors, partitions, drains, sewers, gutters, way-draughts, sinks, water-courses, pumps, pipes, privies, pavements, chimney-pieces, windows, window-shutters, doors, locks, fastenings, and bells, thereunto belonging, and also all such fixtures, improvements, and additions as, at any time during the continuance of the said term, shall be erected and made thereon,] in and with all and all manner of needful and necessary amendments and reparations whatsoever, the said [*lessee*,] his executors, administrators, or assigns, being allowed timber in the rough for the same, if it can be found on the said premises.

To paint.

And also shall and will, in every third year during the continuance of the said term, paint, or cause to be painted, in good oil colour, all the outside wood and iron work of and belonging to the said hereby demised messuage and premises.

To quit at the expiration of term.

And the said messuage or tenement, buildings, and premises, with the walls, pavements, sewers, drains, and other appurtenances thereto, so well and sufficiently repaired, upheld, supported, maintained, painted, scoured, cleansed, emptied, amended and kept, shall and will, at the expiration or other sooner determination of the said term hereby granted, peaceably and quietly leave, quit, surrender, and yield up unto the said A. B., his heirs or assigns.

And also, that he, the said C. D., his executors, administrators, and assigns, shall not nor will, at any time during the said term hereby granted, use, exercise, or carry on, or permit or suffer to be used, exercised, or carried on, in or upon the said premises, hereinbefore described, and intended to be hereby demised, or any part thereof, any or either of the trades of a vintner, &c. &c. &c., or any noisome, noisy, or offensive trade or business, without the express consent in writing under the hand of the said A. B., his heirs or assigns; nor shall nor will, without such consent in writing as aforesaid, at any time during the said term; convert the aforesaid premises, or any part thereof, into a shop, warehouse, or place of sale, of any kind or description whatsoever.

Against offensive trades.

And also shall and will, from time to time, and at all times during the said term, keep a flock of sheep; and shall and will tether the same in a fair, proper, and husbandlike manner, on such part or parts of the said farm, lands, hereditaments, and premises, as shall stand most in need of manure, except only during the last year of the said term hereby demised, when the same shall be tethered and folded on such part or parts of the same premises as the said A. B., his heirs or assigns, shall from time to time direct, and in default of such direction, then on such part or parts of the said farm, lands, or premises, as shall most want or require the same for the next crop.

To keep and fold sheep on the premises.

And also shall and will, from time to time, and at all seasonable times during the said term hereby granted, fodder and litter out all the hay, straw, chaff, and clover, which shall yearly arise from or upon the said land and premises, during the said term, for the purpose of being converted into dung, with neat beasts and other cattle, on some part or parts of the said demised premises. And shall and will, from time to time, and at all seasonable times during the continuance of the said term, lay, spread out, and expend, in a husbandlike manner, the ma-

To fold and litter out neat cattle.

nure and compost which shall be so made, on such part and parts of the said farm, lands, and premises hereby demised, as shall have most occasion for the same.

To repair  
fences.

And also shall and will, from time to time during the term hereby granted, make anew the quick and other hedges, ditches, and fences of or belonging to the said premises, or such part and parts thereof as shall require to be new made, in a good and husband-like manner, and at proper seasons of the year; and ditch, bank up, and fence the same hedges, and every of them, on either side, according to the most approved mode of good husbandry; and so as to protect and preserve all such young trees and woods as shall be growing therein from being barked, destroyed, or injured by cattle. And also shall and will, at all times, and from time to time during the said term, foster and preserve the young trees, spires, thrifts, layers, and quicksets of all kinds, standing, growing, or being in or upon the said farm, lands, and premises, or any part thereof.

Not to cut  
or lop trees,  
except by  
permission  
of lessor.

And also shall not nor will, at any time during the said term hereby granted, hew, fell, cut down, lop, top, stub up, or destroy, or cause or suffer to be hewn, felled, cut down, lopped, stubbed up, or destroyed, without the consent in writing of the said A. B., his heirs or assigns, any of the timber, timber-like, or other trees hereinbefore excepted, other than such as shall have been assigned or appointed to him or them by the said A. B., his heirs or assigns, for the repair of the said premises, or some part thereof; nor cut down any alders, willows, sallows, pollards, hazels, thorns, bushes, springs, quicksets, wood, or underwood, which are now growing or being on the said premises, save only and except for necessary repairs and fences, to be allowed and set out by the said A. B., his heirs or assigns. Provided always, that the said C. D., his executors, administrators, and assigns, shall and may, at all times during the said term, have and take the underwood growing upon

the said lands and premises ; and also lop the pollard-trees, and trim the timber-trees which have been heretofore lopped and trimmed, and the plashing of the quick-hedges, as and for estovers, and by way of house-bote, plough-bote, cart-bote, and hedge-bote, so as the same are taken in a husbandlike manner, and at all seasonable times of the year.

And also, that he, the said C. D., shall not nor will, at any time during the said demise, plough, break up, or convert into tillage, or cause or suffer to be ploughed, broken up, or converted into tillage, any part of the meadow or pasture land hereby demised, which has not been in tilth for Not to plough ancient pastures. years last past, nor dig nor break up for brick, tiles, turfs, flags, or any other purpose, the said arable land, or any other part of the said premises. Provided always, and it is hereby agreed and declared, that for and notwithstanding any thing hereinbefore contained to the contrary, it shall be lawful for the said C. D., his executors, administrators, and assigns, at all times during the said demise, to dig for and take any quantity of clay or marl, out of any part of the said demised premises, as he or they shall judge proper, for the improvement of the lands hereby demised ; and also all such quantity of gravel as shall be necessary to keep the roads in and upon the said premises in good repair and condition, but not for sale, nor for the purpose of carrying any part of the same off the said demised premises.

And further, that he, the said C. D., his executors, &c., shall and will from time to time, and at all times during the said term hereby granted, purchase, or cause to be purchased, have, receive, and take, of and from the said, &c., all such strong beer, ale, and table-beer, as shall be required, bought, had, received, or taken in and retailed, vended, sold, disposed, and made use of, in, upon, or about the aforesaid inn and the tap-room thereof, and all other parts of the said buildings and premises aforesaid, and shall not buy, purchase, vend, sell, dispose, or make use of any To take beer of landlord.

strong beer, ale, and table-beer, in, upon, or about the same premises, other than such as shall be bought of the said, &c., during the term aforesaid, if the said, &c., shall and do serve and deliver in such strong beer, ale, and table-beer, at the same prices as to their other customers, and of the like good quality, but no longer or otherwise.

For quiet enjoyment of premises demised.

And the said A. B. doth hereby for himself, his heirs and assigns, covenant, promise, and agree, to and with the said C. D., his executors, administrators, and assigns, that it shall and may be lawful for the said C. D., his executors, administrators, and assigns, from time to time, and at all times hereafter, peaceably and quietly to enter in and upon, and to have, hold, use, occupy, possess, and enjoy, the said premises hereinbefore described, and intended to be hereby demised, and every part thereof, to and for his and their own absolute use and benefit, without any let, suit, trouble, denial, eviction, ejection, interruption, or disturbance whatsoever, of, from, or by the said A. B. or his heirs, or any other person lawfully or equitably claiming, or to claim, by, from, through, under, or in trust for him or them.

To insure against fire.

And also, that he, the said C. D., his executors, administrators, and assigns, shall and will, within days next after the date hereof, at his or their expense and charges, insure the said messuage, buildings, and premises hereinbefore described, and intended to be hereby demised, from accidents by fire, in the

Insurance Office, in London, (or in some other good and reputable office, to be approved of by the said A. B., his heirs, or assigns,) in the joint names of the said A. B., his heirs or assigns, and the said C. D., his executors, administrators, or assigns, in the full sum of L. at the least; and continue the same, together with all other messuages which may be erected upon the ground or site thereof during the said term so insured, in the said sum of L. , or such other sum as for the time being shall be sufficient for rebuilding and re-

instating the said messuage, buildings, and premises, in case the same, or any part thereof, shall be burnt down, demolished, or damaged by fire: And shall and will, from time to time, and at all times during the continuance of the said term, at the request of the said A. B., his heirs or assigns, produce unto him or them a receipt, acquittance, or other voucher, for the payment of such insurance for the then current year; and in default thereof, that the said A. B., his heirs or assigns, shall and may insure the said messuage, buildings, and premises hereinbefore described, together with all such after-erected buildings as aforesaid, in or for such sum or sums as are hereinbefore mentioned respectively; the costs and expense whereof shall be repaid by the said C. D., his executors, administrators, or assigns, on the next quarter-day of payment of the rent hereby reserved. And it is hereby further agreed, that the sum which shall at any time be recovered and paid by virtue of any such insurance or insurances, shall forthwith, and with all convenient speed, after the same shall be so paid, be laid out, expended, and applied in or towards rebuilding, repairing, and reinstating the whole or such part of the said messuage, buildings, and premises, as shall happen to have been destroyed or damaged, as far as the same will extend. And, moreover, that in case the sum which shall be so insured upon the said messuage, buildings, and premises as aforesaid, shall be found insufficient for rebuilding, repairing, and reinstating the same in a good and substantial manner, then, and in every such case, the said C. D., his executors, administrators, and assigns, shall and will pay and make up all and every such deficiency and deficiencies out of his own proper moneys, and lay out and expend the same in such rebuilding, repairing, and reinstating the same as aforesaid.

And also shall and will, during the said term, as often as occasion shall require, bear, pay, and allow, a reasonable sum towards the making, supporting, and repairing of all party-walls, party-gutters, and

To contribute  
to party-walls.

drains, which shall belong to the said hereby demised premises, or any part thereof, with all necessary reparations and amendments.

To build a dwelling-house.

And also, that he, the said [*lessee*,] his executors, or administrators, shall and will, at his and their own costs and charges, within the space of two years from the date hereof, erect and build, or cause or procure to be erected and built, upon some convenient part of the said new-inclosed lands hereby demised, to be fixed upon by the said [*lessor*] or his assigns, or such other person or persons as aforesaid, a good, sufficient, and substantial dwelling-house, with all proper and convenient out-offices, and also a barn with two bays, and a thrashing-floor; also two stables, hay-lofts over the same; also a cow-shed to hold twenty head of cattle, with pig-styes and fold-yard; the outwalls of which said dwelling-house, barn, and stable, shall be built of a proper thickness and strength: and that, in erecting and completing such buildings, he, the said [*lessee*,] shall and will lay out and expend the sum of £.500 at the least; and, in all such buildings and erections, shall and will make use of good sound timber of a proper strength, and good bricks, stone, tiles, mortar, and other materials of all kinds.

Tenant to use lands in a regular way.

And also, that he, the said [*lessee*,] his executors, administrators, and assigns, shall and will, from time to time, and at all times during the continuance of this demise or lease, use, manage, cultivate, and employ all and every the aforesaid lands and premises, in a good and husbandlike manner, and in a due and regular course of husbandry; and not wilfully or willingly waste, destroy, impoverish, or make barren, or cause or procure, or willingly suffer the same, or any part or parts thereof, or the timber or trees which during the said term shall or may be planted or grow upon the said demised lands, or any part thereof, to be wasted, destroyed, impoverished, or made barren, by over-much tillage or otherwise, but from time to time, and at all times, shall and will do his and their best endeavours to preserve the same

from waste, spoil, and destruction, and in and upon the same lands and premises duly and properly spend, use, lay, and employ all the hay, straw, fodder, dung, soil, muck, manure, and compost, that shall and may from time to time arise, come, grow, or be made in or upon the said premises.

And at the end of this demise or lease, shall and will leave upon some convenient part or parts of the said premises, for the use of the said [*lessor*] and his assigns, or such other person or persons as aforesaid, all the hay, straw, fodder, dung, soil, muck, manure, and compost, that shall remain unspent, except thirty tons of hay, which the said [*lessee*,] his executors and administrators,\* is and are to have liberty to carry away, sell, and dispose of, as is hereafter mentioned.

To leave straw, &c., at the end of term.

And also, that he, the said [*lessee*,] his executors or administrators,\* shall and will, from time to time, and at all times during the continuance of this demise or lease, when and so often as the said hereby demised lands, or any part thereof, shall have gone through a regular and due course of tillage, lay down the same in an husbandlike manner, with an usual and sufficient quantity of clover or other grass seeds.

After a regular tillage, to lay same down with clover or grass seeds.

And also, that he, the said [*lessee*,] his executors and administrators,\* shall and will, from time to time, and at all times during the continuance of this demise or lease, make summer fallow, and sow with turnips all the clover leys that shall have been broken up and sown the preceding year with grain, before another crop shall be taken therefrom.

To make summer fallows, and sow with turnips the clover-leys broken up the preceding year.

And also, that he, the said [*lessee*,] his executors or administrators,\* or any of them, shall not nor will at any time or times after the first eight years of the said term of twenty-one years hereby demised, take more than two crops (a turnip or clover crop not to be deemed one) successively off any part of the said lands hereby demised.

Not to take more than two crops (a turnip and clover crop not to be deemed one) off any of the lands.

And shall and will at all times after the first *eight* \* Where there is no restraint upon assigning, the word "assigns" should be inserted after administrators.

And after that time to lay down the same with



good seeds,  
and manure  
the same with  
twelve cart-  
loads of dung  
to every acre.

*years* of the said term, with the second or last of the said crops of grain sow and lay down the lands so cropped with good and sufficient quantities of clover and other proper grass seeds, and previous to the sowing of one of the said crops, manure the said lands with either twelve full cart-loads of good rotten muck, or eight quarters of well burnt clod lime to every acre.

Tenant in the  
Lent seedness,  
before the  
expiration of  
the lease, to  
sow clover.

And also, that he, the said [*lessee*], his executors or administrators, shall and will, at his and their own costs, in the Lent seedness next before the end or expiration of this demise or lease, in a good and husbandlike manner, and according to the custom of the country, sow a sufficient and usual quantity of clover seed, or other grass seeds, upon so much of the said hereby demised lands as shall have been sown with Lent corn or grain, and preserve the same from harvest-time till the end of the said term, and not permit or suffer the same to be grazed or eaten by any horses, sheep, pigs, or other cattle whatsoever; such last mentioned seeds, at the market-price thereof, to be paid for by the said [*lessor*] or his assigns, or such other person or persons as aforesaid. And also, that he, the said [*lessee*], his executors or administrators, shall and will, at Candlemas-day next before the end, expiration, or other sooner determination of this demise or lease, hay up, and deliver possession to the said [*lessor*] or his assigns, or such other person or persons as aforesaid, of the said demised meadows, called or known by the names of, &c.

Lessor or  
tenants to  
enter the  
Christmas  
preceding ex-  
piration of  
tenancy to  
plough.

And also, that it shall and may be lawful to and for the said [*lessor*] and his assigns, or such other person or persons as aforesaid, and his or their agents, or the future tenant of the said demised lands, at Christmas, or other proper season for so doing, next before the end of the said term, to enter upon and plough up all such parts of the said demised lands as shall the preceding year have been sown with winter corn or grain.

And also, that he, the said [*lessee*,] his executors or administrators, shall and will, from time to time, and at all times during the continuance of this demise or lease, at the request of the said [*lessor*,] his heirs or assigns, sign all such notices forewarning any person or persons from trespassing, hunting, shooting, or sporting upon the said demised premises, as he, the said [*lessor*,] his heirs or assigns,\* shall think proper: And that it shall and may be lawful to and for the said [*lessor*,] his heirs or assigns, to use the name or names of him the said [*lessee*,] his executors or administrators, in any action or actions he or they shall think proper to commence, sue, or prosecute, against any person or persons whomsoever, for hunting, coursing, shooting, or sporting upon the said demised premises, or any part thereof, (he, the said [*lessor*,] and his heirs or assigns, indemnifying and saving harmless the said [*lessee*,] his executors and administrators, from and against all costs, charges, and expenses, which he or they shall or may be at, or put unto, for, or by reason, or on account of any such action being brought, commenced, or prosecuted in his or their name or names as aforesaid.)

*Lessee to sign notices to forewarn from trespassing.*

*And to permit his name to be used in actions.*

And also, that he, the said [*lessee*,] his executors or administrators, shall not nor will release or discharge any action or actions which, by the direction of the said lessor and his assigns, or such other person or persons as aforesaid, shall be so brought or commenced in the name or names of him the said [*lessee*,] his executors or administrators, as aforesaid.

*Not to release actions.*

And further, that it shall and may be lawful to and for the said [*lessor*] and his assigns, and such other person or persons as aforesaid, and his and their agents, servants, and workmen, once or oftener in every year during the said hereby demised term, at all convenient times in the day-time, at his or their free will and pleasures, to enter into and upon the said

*Landlord to enter and view repairs.*

\* These words are applicable to a lease by the owner of the fee; the reference to the lessor in the previous forms are proper in a lease by a tenant for life under a power.

demised premises, and into and upon any messuages and buildings already erected and built, or that may be erected and built thereon, to view, search, and see the state and condition of the reparations thereof, and of the hedges and fences of and belonging to the same premises, and to provide for, and require the performance of the covenants and agreements herein contained.

Lessor at Michaelmas, previous to quitting, to sow any quantity not exceeding acres of winter corn for his benefit, with room to thrash, &c.

And also, that it shall and may be lawful to and for the said [*lessee*,] his executors, administrators, or assigns, in the Michaelmas seedness next before the end or other sooner determination of the said term hereby granted, to sow any quantity of the said demised lands, not exceeding                    acres, with winter corn, so as the same be sown upon a summer fallow, or brush clover, properly prepared with muck or lime, in an husbandlike manner; and that the said [*lessee*,] his executors, administrators, and assigns, shall have the benefit of the crop of such winter corn, and also room in the barns upon the said demised premises, to house and thrash out the same till the                    day of                    next following the harvest; allowing one-third part of the said crops of corn as shall be so sown to be set out in the field after reaping, for the use and benefit of the said [*lessor*] and his assigns, or such other person or persons who for the time, &c., in possession as aforesaid, as a recompence and satisfaction for the growing of the said corn, from the end or other sooner determination of the said hereby demised term to harvest-time, and for the use of the barns for harvesting and thrashing out the same as aforesaid.

But leaving all the straw.

And also leaving all the straw arising from the said crops upon the premises, for the use of the said [*lessor*] and his assigns, or such other person or persons as aforesaid.

## ATTESTATIONS.

*The following are the general Forms of Attestation.*

Signed, sealed, published, and declared by the said Of a will.  
testator, as and for his last will and testament, in the  
presence of us, who in his presence, at his request,  
and in the presence of each other, have hereunto  
subscribed our names as witnesses thereto.

Signed, sealed, and delivered,<sup>a</sup> by the within-nam- Of a deed.  
ed A. B. in the presence of

[*If the party be deaf and dumb, say,*] who being If party dumb.  
deaf and dumb, but capable of reading; the same  
was first read over by him, and he seemed perfectly  
to understand the contents thereof.

[*If an illiterate person, say,*] the same being first Illiterate.  
read over and explained to him.

[*If by a person blind, say,*] he being blind, the Or blind.  
same indenture having been first carefully and audi-  
bly read over to him.

Signed, sealed, and delivered,<sup>b</sup> by the within-nam- Of a deed exe-  
ed A. B. by A. D., his attorney duly appointed by cuted by  
the letter of attorney, under the hand and seal of the attorney.  
said A. B., and hereunto annexed.<sup>c</sup>

Signed, sealed, and delivered, by the within-nam- In case of  
ed A. B., (the words [*here copy the words*] having erasures, &c.  
been previously interlined in the fourth and fifth  
lines of the first skin, (or written over obliterations,))

<sup>a</sup> For what constitutes a good delivery in general, see  
Shep. Touch, 57. Cru. Dig. 28.

<sup>b</sup> The mode of delivery is to take the deed and say, "I  
deliver this as the act and deed of the within-named C. D."

As to the effect of deeds retained in the possession of the  
grantor after the execution, and what is a sufficient delivery,  
see Doe d. Garnous v. Knight, 4 Law Journal, 162.

<sup>c</sup> If the letter of attorney concern other property, a true  
copy of the same should be annexed.

Attestation  
of a deed  
where there  
happens to  
be erasures,  
or interline-  
ations.

between [*mentioning the lines and skin,*] or obliterated, [*mentioning the lines and skin ;*] or the word *Henry* having been previously interlined between the words, &c., and the name J. H. written on an erasure or erasures in the fifth line of the second skin thereof,) in the presence of

## CHAPTER III.

### ABSTRACTS OF TITLE.

THE preparation of abstracts of title is too often thought a matter of very little importance, requiring little if any consideration; but unless this duty, as well as that of examining the abstract, is properly performed, all the subsequent expense attendant upon the consideration and investigation of the title may turn out to be of little service in protecting a purchaser from the consequences of an improvident investment.

If abstracts were prepared by persons thoroughly acquainted with the general principles of real property law, much greater conciseness might be used than is now generally adopted; but I would not advise any one without such knowledge to depart from the ordinary mode.

The conditions of sale cannot be properly prepared without a thorough knowledge of the state of the title. It would, therefore, be very desirable that the preparation of the abstract should not be postponed, as is ordinarily the case, till after a sale, but should precede the preparation of the conditions, and in cases where the property is not too small to admit of that expense, it would in general be found the truest economy, on the part of the vendor, to have the title perused on his behalf previous to offering any property for sale. If this were done much ex-

pense might be avoided by stipulations, which would be assented to at the time of sale, precluding the purchaser from requiring many things, which, after a sale without such stipulations, would be most strenuously insisted on.

Where the property is derived under one title only, the chronological order is the most natural and best to pursue in forming an abstract, but such a course gives rise to great confusion where the property is held under several titles, in which case each separate title should be traced singly to the period when they became united, after which the abstract may be continued according to the order of time.

Where freeholds and copyholds have a connected title, the abstract as to the freehold should contain the equitable title to the copyhold, the legal title to which would be most conveniently made the subject of a separate abstract.

In the selection of the instrument with which to commence an abstract, a deed immediately founded upon some other instrument should be avoided, as, for instance, a simple appointment, (as distinguished from the common conveyance of a release and appointment,) a deed barring an entail or confirmatory of a will, as in such cases an enquiry would always be made for the instrument containing the power creating the entail, or giving rise to the deed in question.

I cannot here altogether pass by unnoticed the important question to which the recent limitation acts have given rise, with respect to the length of time for which a purchaser, uncontrolled by any stipulations, has a right to insist upon having a title shown to him. The question is one of considerable difficulty, and upon which the most eminent conveyancers are not quite agreed. Upon one point, however, there can be no doubt, namely, that the security of titles has been considerably increased, and the danger of taking a title extending over a less period than that of sixty years formerly required, is proportion-

ably diminished. I cannot pretend to decide between the different views, but my own impression certainly is, that the period of forty years<sup>a</sup> ought now to take the place of that of sixty years formerly required ; but as, previous to the recent alterations, many cases existed in which a title extending over that period could not be relied on without an investigation into the earlier title, so, since the passing of the limitation acts, a title extending over a period of forty years cannot, in many cases, be considered as conclusive.

The danger to be feared in accepting a title of less duration than sixty years, and against which even that period afforded no positive security, arises from the circumstance, that time does not run against a remainder-man during the life of a tenant for life, though such tenant for life may himself be barred ; thus a tenant for life might, on coming of age, upwards of forty, or even sixty years ago, have made a conveyance in fee, from which period a satisfactory title might be deduced, but yet, if he had died within twenty years, no title could have been acquired against the remainder-man, and possibly owing to disabilities, the title of the remainder-man might be still unbarred, though the death of the tenant for life might have taken place upwards of thirty years preceding. When it is considered that estates for life may be limited to the unborn children of living persons, it must be obvious that extreme cases may be put in which a title of even 100 years would not afford a mathematical certainty as to the security of a purchaser in accepting such a title ; but, nevertheless, I cannot but feel that, taking the probability of danger into consideration, too high an insurance against such danger may be, and generally is, paid in the shape of expenses when a title is investigated without a due allowance for the moral probabilities of the case. I am aware that most conveyancing counsel, though perfectly assent-

<sup>a</sup> 1 Sugd. V. and P. 330, and Arguments of Counsel in *Cottrill v. Watkins*, 1 Beav. 361.



ing to the truth of these observations, would not take upon themselves the responsibility of dispensing with the requisitions formerly insisted on; but I still think, especially in the many small cases where the solicitor is content to retain the responsibility of investigating the title without advice, the great body of purchasers would have little to fear if forty years was more generally adopted as the period to which the investigation of titles should in future be limited.

It should be remembered, that an abstract ought to be something more than a statement of the deeds and other documents affecting the title; it should be an abstract of the whole title, and should contain a statement of every circumstance forming a link in the title, as deaths, marriages, heirships, intestacies, births, &c., which should be stated in their proper order.

In considering what parts of deeds and other instruments should be abstracted, it will perhaps be better to enquire what parts may be omitted, as every part which is not clearly unnecessary should be stated.

The description of the parties in a deed may be omitted where it does not differ from a previous description.

Recitals of instruments previously abstracted or recited in the same terms, recitals of facts previously stated or recited, or of instruments or facts not connected with the subject of the abstract, should only be referred to where the object is simply the statement of the facts themselves; but if the original deeds are lost, the recitals of them should be stated fully as evidence of their contents.

Where the description of the parcels is the same in several deeds, it may be omitted in all but the first, simply stating that the description is the same. The heads only of the general words are noticed. Uses and trusts should generally be stated fully, but where, as in some settlements or wills, the limitations are very long, those ulterior to the one under which the title is traced, and also trusts which never took

effect, as of portions for younger children, where none come into existence, may be referred to very shortly. Powers and provisos that have been, or are intended to be, acted upon, should be stated fully; others may be simply referred to. Covenants for title, or other ordinary covenants, need only be referred to, noticing, however, any qualifications to them as exceptions in the covenant against incumbrances. The habendum consideration, stamps, execution, attestation, receipts, and other indorsements, as of livery of seisin, enrolment, &c., should be always carefully stated.

The abstract of a will should show its date, the **A will.** name, and description of the testator, and of the devisee or legatee, and the appointment of executors; and it is very advisable that devises or bequests under which the title is derived should be stated in the words of the testator. It should set forth *the execution* and attestation, the death of the testator, and if the will affects real property, who was the testator's heir at his death; the court where, and the person by whom proved; if in a register county, the registry.

An abstract of an **ADMINISTRATION** should state **An admini- stration.** the date, by what court granted, *of what*, whether general, *de bonis non*, or special, of whom, to whom; if any of the administrators are dead, when they died; which should be shown by their burial-certificates, probates, or administrations.

The abstract of a private **ACT OF PARLIAMENT**, **Act of parlia- ment.** usually called an estate act, if made before 33 Geo. III., c. 3, should state the session in which it was made; if after that time, the day when the act received the royal assent, the title of the act, the recitals, the enacting clause, the mode of paying the purchase-moneys, the indemnity clause to purchasers, &c.

In the case of an *exchange*, &c., the eviction **Exchange.** clause, the powers, and the saving clause, should be always particularly stated.

The abstract of an **AWARD** under an enclosure act **An enclosure award.** need only state that [*the commissioners*,] acting un-

der and by virtue of an act passed, &c., entitled, &c., by their award, bearing date, &c., allotted unto, &c., in respect of, &c., all that, &c.; at the end it should state where the award has been enrolled. There should be a title shown to the lands, in respect of which the allotment is made, previously to abstracting the award. *Bythewood's Noy*, ninth edition, p. 160

A decree.

In abstracting a decree, such part of it only as affects the title should be abstracted; as by declaring the will of the real estate duly proved, decreeing a redemption, a foreclosure, partition, directing a sale in performance of trusts, or a mortgage to be made, or portions to be raised, &c., with any direction for the application of money, and the master's report thereon, with the order for its confirmation. 1 *Preston on Abst.* 189.

From what fell from Mr J. Taunton in the discussion of the case of *Drax v. Scroope*,<sup>r</sup> it would appear, that it is part of the duty of an attorney to peruse an abstract before he takes the opinion of counsel upon it, in order to ascertain whether it is necessary that he should do so; but the point does not appear to have received the sanction of any direct decision in its favour.

An attorney will not relieve himself from responsibility in accepting a title by taking the opinion of counsel, unless he lays the whole case before him. Thus, in a case,<sup>s</sup> in which the attorney, instead of setting out in the abstract the terms of some instrument, stated what he conceived to be its effect, and Mr Preston, before whom it was laid, approved of the title, upon its proving to be defective, the attorney was held liable to his client for the loss thereby sustained, it appearing that the attorney had misconceived the effect of such instrument, and that, had it been properly set out, Mr Preston would have disapproved of the title.

<sup>r</sup> 1 Dowl. 69.

<sup>s</sup> *Ireson v. Pearman*, 3 Barn. and C. 799; 5 Dowl. and R. 687; 3 Law Jo. 119.

Recitals in old deeds are not evidence of facts unless properly corroborated. *Fort v. Clarke*, 1 Russ. 601.

The abstract should have four margins, the first for the parties, provisos, covenants, and powers; the second for the recitals, habendum, uses, and trusts; the third for the operative part; and the fourth for the parcels and general words and execution. The date should be extended beyond the outer margin.

*Forms of Abstract.*

16th and 17th March, 1804. Indentures of lease and release, the release made between A. B., of, &c., on the first part; C. D., of, &c., of the second part; and E. F., of, &c., of the third part; Lease and Release.

It is witnessed, that in consideration of the sum of L.500 to the said A. B. paid by the said C. D., he, the said A. B., did grant, bargain, sell, alien, release, and confirm unto the said C. D., his heirs and assigns,

All [*state the parcels as in the deed*,] together with all outhouses, &c., and the reversion, &c., and all the estate, &c.;

To hold unto the said C. D., his heirs and assigns, to such uses, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisos, and declarations, as the said C. D., by any deed or deeds, writing or writings, with or without power of revocation, to be by him signed, sealed, and delivered in the presence of, and attested by two or more credible witnesses, should from time to time direct, limit, or appoint; and in the meantime, and until default should be made in any such direction, limitation, or appointment, and so far as the name (if incomplete) should not extend,

To the use of the said C. D. and his assigns, during his life, without impeachment of waste; and after the determination of that estate by any means in his lifetime,

To the use of the said E. F. and his heirs, during

the life of the said C. D., in trust for him and his assigns during his natural life, and from and after the determination of the estate so thereby limited, to the said E. F., as aforesaid; and in the meantime subject thereto, and to the trusts thereof, to the use of the said C. D., his heirs and assigns, for ever.

Covenants from the said A. B. he was lawfully seised; that he had good right to convey; for quiet enjoyment; free from incumbrances; and for further assurance.

Executed by the said A. B., attested by two witnesses, and a receipt for the consideration-money indorsed, signed, and witnessed.

**Settlement.**

*Date.* Indentures of lease and release, and settlement, the latter between, &c.

Reciting, &c.

It is witnessed, that, in pursuance and performance of the said agreements, and in consideration of natural love and affection, &c., and of 10s. to the said W. B. paid by the said W. H. and E. L., the said W. B. did grant, bargain, sell, release, and confirm unto the said W. H. and E. L., (in their actual possession, &c.,) and to their heirs and assigns;

All, &c. (*set out the premises fully.*)

To hold unto the said W. H. and E. L., their heirs and assigns, to the uses, upon and for the trusts, intents, and purposes thereafter expressed, declared, and contained; (that is to say;)

To the use, (*set out the uses fully.*)

Power of entry and distress to the said N. B., A. B., and C. B., respectively; and to the said W. H. and E. L., in case of non-payment of the said respective annuities within twenty-one days.

Power to the said annuitants respectively, in case of non-payment for forty days, to enter and enjoy, and take rents of the said hereditaments, until satisfaction of the said respective annuities and costs.

And subject to the said annuities, and to the powers and remedies thereby provided, for securing

payment thereof, the said hereditaments and premises should be and remain,

To the use, &c.

Declaration that the said W. H. and E. L., their executors, &c., should stand seised of the said annuity, or yearly rent-charge of L. , upon trust to pay and apply one of the said annuities to and for the benefit of the said H. B. during his life, in manner therein mentioned: and after his decease, in case the same should happen during the continuance of the said annuity, then to stand and be seised thereof, upon such trusts as were therein-after expressed of and concerning the interest and dividend of the portion and fortune thereby provided for the said H. B. and his issue.

Proviso for cessor of said term of 1000 years when the whole of the said L. and interest should have been raised.

Covenants by said W. B. for payment of the said annuities.

Covenants that said W. B. had power to convey.

Covenants for quiet enjoyment, free from incumbrances, and for further assurance.

Proviso that in case the said W. B. should at any time thereafter, during his life, be desirous to revoke the provision thereby made for his said sons, and should, by transferring to the said trustee or trustees for the time being, a competent sum in the public stocks or funds of Great Britain, or otherwise, to the satisfaction of the said trustees or trustee, secure to or for the benefit of the said T. B., &c., the payment of annuities and portions equal in amount to those thereby provided for them respectively, and to be limited and settled upon the same trusts, and in the same manner, or as near thereto as circumstances would then admit of; then it should be lawful for the said W. B., by deed, to be by him executed as therein mentioned, to revoke the uses, &c., therein contained, and to limit and appoint any

other uses, &c., of and concerning the hereditaments and premises thereinbefore described.

Executed by the said, &c., and attested by two witnesses.

will.

*Date.* Will of said W. B., whereby he confirmed a settlement made by him upon his children by his late wife E., of annuities and portions charged upon his real estate at, &c., aforesaid, bearing date, &c.

And the said testator gave and devised [*inter alia*] the said capital messuage, &c., all other his messuages, lands, tenements, hereditaments, and real estate, &c., unto N. H. and J. P. and their heirs, To the use (as to the manor of, &c.,) of testator's wife, M. B., for life.

*Remainder.\**

To use of [*trustees,*] and their heirs, during the life of the said M. B., to support contingent remainders.

*Rem.*

As to said hereditaments so limited to said M. B. as aforesaid, from and immediately after her decease; and as to all other, the said real estate thereinbefore devised from and immediately after the testator's decease.

To use of testator's eldest son, T. B., for life.

*Rem.*

To use of the said trustees and their heirs, during the life of T. B., to preserve contingent remainders.

*Rem.*

To use of first, second, third, fourth, and all other sons of the said T. B., lawfully to be begotten severally and successively in tail male.

*Rem.*

To use of testator's second son, N. B., for life.

*Rem.*

To use of the said trustees and their heirs, during the life of the said N. B., to preserve contingent remainders.

*Rem.*

To the use of first, second, third, fourth, and all

\* When the remainders are contingent, it is better to take the words in the deed or will than use the word "remainder."

other sons of the said N. B., lawfully begotten, or to be begotten severally and successively in tail male.

*Rem.*

To use of E. L., his executors, &c., for 1200 years, to be computed from the decease of survivor of T. B. and N. B.; and failure of issue male of both their bodies, upon the trusts thereafter declared. *Rem.*

To the right heirs of the said W. B. for ever.

Declaration that the said term of 1200 years was limited; in trust to raise L. additional portions for testator's sons, T. B. and C. B., in case either of testator's sons, H. B. and A. B., should, under the limitations thereinbefore contained, during his life, become entitled to the rents of testator's estate at, &c.

Proviso for cessor of said term, when said L. should be raised.

Powers to testator's said children respectively, when in possession of said estate, to raise jointures for their wives, and portions for younger children, and to grant leases in manner therein mentioned.

Power of sale and exchange.

And said testator gave and bequeathed all the household furniture, &c., at the time of testator's decease, unto the said N. H., I. P., and E. L., their executors, &c., upon trust, to permit his said wife to enjoy the same during her natural life; and after her decease, in trust for the person who, under the limitations thereinbefore contained, should upon the same event first become beneficially entitled in possession to the said messuage and other hereditaments, so limited to the use of his said wife as aforesaid, or to the rents or profits thereof as tenant for life, or in tail, his executors, administrators, and assigns.

And after various other bequests, the said testator directed that his executors should pay and apply a competent part of the residue of his personal estate, which should remain after payment of all his debts, funeral and testamentary expenses, and the legacies thereinbefore bequeathed, in satisfaction and dis-



charge of the several portions or sums of money which by the said therein above-mentioned indenture of settlement, dated the, &c., were charged upon his estates at, &c., aforesaid, in favour of his five younger sons, and amounting together to the sum of L. , or so much thereof as should at the time of his decease remain unsatisfied. To the intent that his said last-mentioned estate might be wholly discharged from the payment thereof. And the said testator appointed the said N. H., I. P., and E. L., executors of his will.

Executed by the said W. B., and attested by three witnesses.

Codicil.

*Date.* Codicil to said abstracted will, whereby said W. B. declared that in case his said wife M. B. should after his decease intermarry with any other husband, then the estate and interest, by his said will limited to her, of and in all that, &c., therein should cease and determine. And testator in that event charged the said premises with the payment of an annuity or yearly rent-charge of L. to the said M. B. during the remainder of her life.

Executed and attested by three witnesses.

Testator died on leaving H. E. B. his heir.

Proved in the prerogative court of the archbishop of Canterbury, on, &c., by, &c., the said executors.

Abstract of  
the title to a  
copyhold  
estate.

*Court. Date.* Admission of H. G., on decease of P. G., who having died seised of premises called P., containing sixteen acres, by his will, dated, &c., gave as follows:—"I give and bequeath unto my cousin, H. G., son of my brother R. G., whom I make my full and sole executor, &c., all that my mansion-house that now I dwell in, with all barns, stables, and all other out-houses thereunto belonging; to have and enjoy the same to him and his heirs for ever, provided he pay my just debts, funeral expenses, and all my legacies hereby given."

[Add date of probate, registry, enrolment, &c.]

*Date.* Surrender by W. P., and R. his wife, of a

tenement called N., and a close called H., containing  
 acres, and L., containing        acres, lying  
 together in L., between D. and C., &c. To the use  
 of A. G., daughter of H. G., of        for life; and  
 after her decease, to the use of the right heirs of said  
 W. P. for ever.

*Date.* Admission of W. P. jun., only son and  
 heir of H. P., who died seised of all that separate  
 tenement called F., between G. street and B. lane,  
 and also his admission to the reversion of N., &c.,  
 upon the decease of A. P., lately A. G.

*Date.* Admission of H. G., only son and heir of  
 H. G., who died seised of P., &c., to which he was  
 admitted in 1666.

*Date.* Admission of M. G., late M. C., widow of  
 H. G., last mentioned, as mother and guardian of  
 W. G., an infant of the age of two years, the  
 youngest son and heir of the said H. G., last seised  
 to P., &c.

*Date.* Conditional surrender of W. G. to W. F.  
 of all that his customary lands called P., &c., situate  
 at or near K., subject to proviso for redemption on  
 payment of L.200.

*Date.* The like for L.300.

*Date.* Surrender of same premises to the use of  
 W. F., and M. his wife, and their heirs and assigns  
 for ever, and their admission.

*Date.* Surrender by W. F. and wife, to the use  
 of H. G., his heirs and assigns for ever, and his ad-  
 mission.

*Date.* Surrender by H. G. of same premises, to  
 use of said H. G. for his life, and then to P. G.,  
 brother of said H. G., his heirs and assigns for ever.

*Date.* Licence to H. G. to demise for twenty-  
 one years.

Like licence to W. C.

*Date.* Admission of A., wife of W. C., of, &c.,  
 and E., wife of R. O., of, &c., daughters of the said  
 P. G., and his next heirs, stating that H. G. held all  
 those two customary fields of        acres called P.,

at or near K., and died seised thereof, and that he surrendered the same to the use of himself, the said H. G., for his life, with remainder to the use of the said P. G., brother of said H. G., his heirs and assigns for ever. That P. G. was dead, and that A., wife of W. C., and E., wife of R. O., daughter of P. G., were their next heirs to the said premises.

*Date.* Surrender by R. O., and E. his wife, of all their undivided moiety of the same premises, to the use of W. C., his heirs and assigns for ever.

*Date.* Admission of and surrender by W. C. to the use of his will.

*Date.* Surrender by W. C., and A. his wife, of all their undivided moiety therein, to the use of the said W. C., his heirs and assigns for ever.

Licence to W. C. to demise all his lands in L. for twenty-one years.

## CHAPTER IV.

### ACCOUNTS.

I, A. B., of, &c., do hereby undertake to give and render unto C. D., of, &c., a just and true account of, or relating to the business, &c., and other dealings and transactions of him, the said C. D., and of all moneys that shall be received by me on account thereof, at all times when the said C. D. shall require the same; and I undertake to provide and keep such and so many books of account as shall, for that purpose, be necessary, wherein shall be fairly stated or written all moneys received and paid, and all goods which shall be bought or received in, or sold or delivered out upon credit, or otherwise, and all other matters, circumstances, and things necessary to manifest the state and condition of the said trade, (business, or concern,) for the inspection of the said C. D., and to pay the balance in my hands or appearing due to the said C. D. when required by him so to do;<sup>a</sup> and I, the said C. D., do hereby, in consideration thereof, undertake to pay or allow a sa-

Undertaking to keep and render accounts to principal.

<sup>a</sup> Unless it be otherwise stipulated, an agent is bound to account for, and pay over the net proceeds of goods sold by him as soon as he has or might have received them, had he used due diligence; *Vorden v. Parker*, 2 East, 710; *Hunter v. Welsh*, 1 Stark, 224. It may, therefore, be necessary to specify the particular times of accounting, such as quarterly or half-yearly.

lary unto the said A. B., at and after the rate of L. per annum, so long as I shall continue to employ the said A. B. in manner aforesaid.\*

Accounts  
stated, signed,  
and allowed by the  
parties.\*

The above-named A. B. and C. D. having this day stated the before-mentioned (or annexed) account, do hereby reciprocally allow and approve the same, (the several vouchers in respect thereto being produced by the said C. D., and compared and carefully examined with the payments mentioned in the statement made by him, are found by the said A. B. to be correct, and are thereupon delivered up to the said A. B.;) and further, the said A. B. and C. D. do hereby also mutually acknowledge that there is not at the present time any other claim or demand whatever, to their knowledge or belief, subsisting or depending between them. Dated, &c.

Witness.

Attorneys, receivers, or other agents who hold money for others, would do well in depositing it with a banker for safe keeping; or, as a means of transfer, to do so to an account distinct from their own, so as to keep it ear-marked, as (supposing that they had exercised such discretion in the selection of the banker, as they would reasonably be expected to have used in their own case) they would thereby be relieved

\* A memorandum similar to the above, signed by the parties, may answer until a more formal instrument is prepared.

\* If the balance be paid, the acknowledgment of its payment must be upon a receipt stamp. If it is in full of all demands, the same must be on a 10s. stamp, however small the sum. If the allowance include a release, the same must be upon a L.1, 15s. stamp. If mutual releases, there are two parts, and consequently several stamps. It is to be observed, that a general receipt, or acquittance in full of all demands, will discharge all debts, except such as are on specialty, as rent, bonds, and other instruments under seal, which can be waived or released only under seal; *Noyes v. Hopgood*, Jac. 649; *Littler v. Holland*, 3 T. R. 540; *Kaye v. Waghorn*, 1 Taunt. 428.

from responsibility on account of any loss which the failure of the banker might occasion;\* but the deposit should be made in their own name only, so that they might retain the absolute control over it.†

If a party who owes money to another on two different accounts makes a payment generally, the party receiving it may apply it to either, unless it can be collected from the circumstances that the party paying intended at the time of payment to appropriate it to one specifically; therefore, where a debtor gave a warrant of attorney for a certain sum, and was also indebted upon another account, and divers payments were made to the creditor, but not specifically in discharge of the warrant of attorney, the creditor may enforce it, although he had subsequently received a larger sum, it being decided that the creditor might put the sums paid in discharge of which of the two accounts he chose.‡

Where an agent had delivered an account, by which it appeared that he had received certain payments on account, but which in fact he had not received, he was held to be bound by the account which he had delivered, unless he could show he had given credit by mistake.—*Shaw v. Picton*, 4 B. and C., 715.

A purchase being set aside for fraud, the purchaser was decreed to pay an occupation-rent, receiving back his purchase-money with interest, there being a considerable excess of rent above the interest; annual receipts directed to be made in the accounts until the excess of the rent should liquidate the principal.—*Donovan v. Fricker*, Jac., 165.

\* *Rowth v. Howell*, 3 Ves. 566; *Wren v. Kirton*, 11 Ves. 377; *Massey v. Banner*, 1 Jac. and Walker, 241; *Robinson v. Ward*, 2 Car. and Payne, 59; 1 *Ryan and M.*, 274.

† *Salway v. Salway*, 2 Russ. and M., 215.

‡ *Woolley v. Jennings*, 2 Car. and Pay., 144; *Shaw v. Picton*, 4 B. and C., 715; *Pease v. Hirst*, 10 B. and C., 122; *Devaynes v. Noble*, 1 Mer. 585.

An account between an attorney and client, although long settled and signed, will not be considered conclusive as against the latter, and if any items of charge can be impeached, the account will be so far re-opened by the court on a bill filed for that purpose, that the plaintiff will be allowed to surcharge and falsify.—*Johnes v. Lloyd*, 10 Price, 62; but after an account has been once stated and settled, it would be considered conclusive as between the parties, unless a gross error or mistake could be shown in it.—*Truman v. Hurst*, 1 T. R. 42.

Large sums in gross charged in such accounts must be supported by detail of items composing them, or they will not be allowed.—10 Price, 82.

## CHAPTER V.

### ACTIONS.

I, A. B., of, &c., do hereby retain Mr C. D., of, &c., attorney, to commence and prosecute an action in the Court of Queen's Bench, (C. P. or Exch.,) against E. F., of, &c., for the recovery of the sum of twenty pounds, due from him to me for goods sold and delivered, dated, &c.

*Retainer of  
an attorney to  
commence an  
action.*

Witness.

In, &c.

Between, &c.

I, A. B., of, &c., the above-named defendant, do hereby retain and employ Mr C. D., of, &c., as my attorney, to defend the above action commenced against me, dated, &c.

*Retainer of  
an attorney to  
defend.*

Witness.

An attorney should in all cases, before commencing an action or undertaking a defence on behalf of his client, procure from him a retainer or authority for that purpose; *Wilson v. Wilson*, 1 Jac. and W., 457; which (though valid if verbal) should be reduced into writing.\* It should specify to what extent it is intended such authority should extend,

\* *Wright v. Castle*, 3 Mer. 12; *Lord v. Killett*, 2 M. and K. 1; but see *Tabernor v. Tabernor*, 2 Keen, 679, in which case the M. R. said that there ought to be a warrant in writing to authorize a solicitor to commence proceedings.



whether simply to sending a letter, issuing a writ, entering appearance, or conducting the whole case. An attorney is not entitled to charge for any proceedings he may have taken for a client without his authority, and would therefore not only be defeated in an action to recover his bill, if he failed in proving his retainer, but render himself personally liable for the costs of the other parties, unless, by subsequent acquiescence in the proceedings, his client should take that liability upon himself. Lord Tenterden, in his judgment in the case of *Owen v. Ord*,<sup>a</sup> when referring to this subject, said, "That every respectable attorney ought, before he brings an action, to take a written direction from his client for commencing it; and that he ought to do this both for his own sake and for the sake of his client; that it was much better for him, because he got rid of the difficulty in proving the retainer, and that it would also be better for a great many clients, by putting them on their guard, and preventing them from being drawn into lawsuits without their own express direction."

An attorney who has a general authority to conduct the affairs of a client, would be authorized in defending any action or suit that might be commenced against him, but not in commencing one in his client's name.<sup>b</sup>

In the relation which exists between an attorney or solicitor and his client, there exists this anomaly, that whilst he is liable to be discharged at any time at the will of his employer, he having once undertaken his client's cause, cannot<sup>c</sup> refuse to conduct it to a close without some good reason. And, if he were to do so, he would render himself liable to an attachment,<sup>d</sup> would lose any lien or right which he

<sup>a</sup> 3 Car. and P. 349.

<sup>b</sup> *Wright v. Castle*, 3 Mer. 12; *Lord v. Killett*, 2 M. and K. 1.

<sup>c</sup> *Cresswell v. Byron*, 14 Ves. 271.

<sup>d</sup> *Mould v. Roberts*, 4 Dowl. and R. 719.

might otherwise have had for payment of the costs incurred previous to his refusal;\* and if, by such refusal, his client should be subjected to any loss, he would become liable to indemnify him for it.<sup>†</sup>

If the attorney should consider that his client's case could not, if brought to a close, be of any service to him, or if his client should refuse to furnish him with sufficient funds for the conduct of his cause, he would then (after giving his client such a reasonable notice as might enable him to procure the funds or appoint another attorney) be justified in refusing his further services.<sup>‡</sup> Where the attorney or solicitor's withdrawal is upon justifiable grounds, he does not lose his lien for his previous costs, but retains the same right as if he had been discharged by his client.<sup>§</sup>

An attorney who has withdrawn from the conduct of a cause, is not at liberty to act in the same suit on behalf of the opponent of his former client.<sup>¶</sup>

Mr C. D.,

I do hereby, as the attorney (*or agent*) of and for E. F., of, &c., according to the form of the statute in such case made and provided, demand of you the perusal and copy of the warrant by virtue of or under colour whereof you did, on or about the first day of March last, (*state the grievance.*) Dated the, &c.

G. H., of, &c.,

Attorney for the said E. F.

Mr C. D.,

I do hereby, as the attorney (*or agent*) of and for A. B., of, &c., according to the form of the statute in such case made and provided, demand of you the perusal and copy of the warrant of commitment and

\* 6 Ves. 2.

† Cook v. Broomhead, 16 Ves. 133.

‡ Hoby v. Buil, 3 B. and Ald. 350; Lawrence v. Potts, C. and Pay. 428; Rowson v. Earle, M. and M. 538.

§ Merriwether v. Mellish, 13 Ves. 161.

¶ Cholmondeley v. Clinton, 19 Ves. 261; Hutchins v. Hutchins, 1 Hog, 315.

Demand of perusal, and copy of a warrant from a constable.

Demand from a gaoler.

instrument under which you received into your custody the said A. B., on or about the, &c., and kept and detained him in custody for the space of, &c., then next following. Dated, &c.,

Yours, &c., E. F., of, &c.

Attorney for the said A. B.

In the, &c.

B. v. D.

Undertaking  
to pay an at-  
torney's bill.

I, the undersigned, A. B.,<sup>1</sup> of, &c., do hereby undertake and agree to pay to L. M., of, &c., gent., my (late) attorney, all such sums of money as shall happen or appear to be due and owing to him on the taxation of his bill of costs, delivered to me on or about the, &c., amounting to the sum of L.

*Statute of Frauds, 29th Car. II., c. 3.*

This statute enacts, that no action<sup>k</sup> shall be brought in the following cases, unless the agreement, or some note or memorandum thereof, shall be in writing, and signed by the party to be charged therewith, or some other person authorized by him.

1st, *Where an executor or administrator promises to answer out of his own estate.*

2d, *Where a man undertakes to answer for the debt, default, or miscarriage of another.*

3d, *Where any agreement is made in consideration of marriage.*

4th, *Where any contract or sale is made of lands, tenements, or hereditaments, or any interest therein.*

5th, *Where there is any agreement that is not to be performed within one year from the making thereof.*

6th, *Contracts for the sale of goods of the price of L.10 or upwards, where the buyer has not actually accepted part of the goods, or given something in earnest or part-payment.*

<sup>1</sup> If the undertaking is given by a third person, the consideration upon which it is given should be stated.

<sup>k</sup> See 3 Black. 157, 158.

The Statute of Frauds was amended by Lord Tenterden's Act, 9th Geo. IV., c. 14, which came into operation on 1st January 1829, and which has rendered a written memorandum necessary in several other cases. Its principal provisions are stated below, under its different sections.

Sec. 1. An acknowledgment or promise to take a Acknowledg-  
ment of a  
debt. case out of the operations of the statutes of limitation must be in writing, and signed by the party chargeable thereby. No joint-contractor, his executor, or administrator, shall be chargeable by reason of any acknowledgment of the other; saving the effect of any payment of any principal or interest,<sup>1</sup> made by any person whatsoever. Though a person may be barred as to one joint-contractor, he may recover against the other on any new acknowledgment.

2. That no indorsement or memorandum of any Indorsements  
of payment. payment written or made upon any promissory-note, bill of exchange, or other writing, by or on the behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment, so as to take the case out of the operation of the statute.

3. Act shall apply to debts alleged by way of set-off.

4. No promise made after full age to pay any Debts con-  
tracted in in-  
fancy. debt contracted during infancy, or upon any ratification after full age of any promise or simple contract made during infancy, shall be valid, unless in writing, and signed by the party to be charged therewith.

5. No action shall be brought whereby to charge Representa-  
tions of cha-  
racter. any person by reason of any representation made

<sup>1</sup> Payment of interest by one of several joint-debtors during the continuance of the joint-liability takes a case out of the statute as against all, 8 B. and C. 36; Pease v. Hirst, 10 B. and C. 122; 8 Bing. 309; Wyatt v. Hodson, 1 Moore and Scott, 442.

concerning the character, conduct, credit, ability, trade, or dealings of any other person, to the intent that such other person may obtain credit, money, or goods upon,\* unless such representation be made in writing, signed by the party to be charged therewith.

\* *Sic.*

Powers of re-  
cited acts ex-  
tended to  
contracts for  
goods of L.10  
or upwards,  
although the  
goods be not  
ready for de-  
livery.

6. The enactments of the Statutes of Frauds relating to the sale of goods of the value of L.10 and upwards, extended to all contracts for the sale of goods of the value of L.10 and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not, at the time of such contract, be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

7. Memorandums made necessary by the act are exempted from stamp-duty.

## CHAPTER VI.

### ACTS OF PARLIAMENT.

#### *Apportionment of Rents, &c.*

4th WILLIAM IV., cap. 22.—[Royal Assent,  
June 16, 1834.]

An Act to amend an Act of the eleventh year of King George the Second, respecting the Apportionment of Rents, Annuities, and other periodical Payments.

Sec. 1. Rents reserved and made payable on any lease which shall determine on the death of the person making the same, or on the death of the lives for which such person was entitled, shall be considered as within the provisions of the 11th Geo. II.

2. All rents service reserved on any lease granted after the passing of the act by a tenant in fee, or for life, or under a power, and all rents charge, and other rents, annuities, pensions, dividends, moduses, compositions, and all other payments of every description in Great Britain and Ireland, made payable, or coming due at fixed periods, under any instrument, executed, or (in the case of a will) coming into operation after the passing of the act, shall be apportioned, so that on the determination, by death or any other means, of the interest of such person, he, his executors, administrators, and assigns, shall be entitled to a proportion of such payments, subject to a proportion of the charges thereon,

and all remedies for recovering the same when the whole shall become due, but so that as to rents reserved by any demise, the person who, if the act had not passed, would have been entitled to receive the whole amount, shall still receive the same, and the proportion shall be recovered from such person.

3. Act not to apply where it is stipulated that there shall be no apportionment, or to annual sums made payable in policies of assurance.

*Dealings with Bankrupts.*

2d and 3d VICTORIA, cap. 29.—[Royal Assent,  
July 19, 1839.]

An Act for the better Protection of Parties dealing with persons liable to the Bankrupt Laws.

Sec. 1. All contracts, dealings, and transactions by and with any bankrupt, and all executions and attachments executed or levied before the date and issuing of the fiat, shall, notwithstanding a prior act of bankruptcy, be valid in favour of those who had not notice of any prior act of bankruptcy, saving any payment being a fraudulent preference, or any execution on warrants of attorney or cognovits, given by way of fraudulent preference.

*Boundaries of Church Property.*

2d and 3d WILLIAM IV., cap. 80.—August 3, 1832.

An Act to authorize the Identifying of Lands and other Possessions of certain Ecclesiastical and Collegiate Corporations.

Sec. 1. Power given to archbishops, bishops, deans, and chapters, and colleges of Oxford, Cambridge, Winchester, and Eton, to enter into agreements or deeds of reference with their lessees and others whose lands are adjoining, to ascertain and settle unknown or disputed boundaries, or quantities of their manors, &c.

Referees to make surveys, maps, and admeasurements, to examine witnesses on oath, to call for deeds, &c., to make awards, with maps thereto, on

parchment or vellum. Awards and maps to be laid before parties, and their approbation written.

2. Consent of archbishop in case of bishops, of chapter in case of deans, and bishops in case of ecclesiastical corporations sole, required to render proceedings under the act valid.

3. Power to infants, married women, lunatics, &c., to enter into reference.

4. Agreements or deeds of reference, awards, and maps, to be deposited in the registry of the archbishop, bishop, &c. Documents to be produced.

5. Expenses of reference shall be paid equally, unless parties otherwise agree.

6. Act limited to England and Wales.

*Payment of Debts out of Real Estates.*

11th GEORGE IV., and 1st WILLIAM IV., cap 47.

[Royal Assent, July 16, 1830.]

An Act for Consolidating and Amending the Laws for Facilitating the Payment of Debts out of Real Estates.

Sec. 1. Repeal of the statute 3d and 4th William and Mary, cap. 14; Irish statute, 4th Anne, cap. 5; and 47th George III., cap. 74.

2. All wills and testamentary limitations, dispositions, or appointments of lands, &c., of persons dying after the passing of the act, shall be void against persons with whom the testator has entered into any bond, covenant, or other specialty binding heirs.

3. Creditors may maintain actions of debt or covenant upon bonds, covenants, and specialties, against the heirs and devisees of the obligor or covenantor, or their devisees jointly.

4. Where there shall be no heir, actions may be maintained against the devisee solely.

5. The act not to affect limitations for payment of debts, or portions for children, in pursuance of any antenuptial marriage-contract in writing.

6. Heir selling lands before action brought shall be liable in an action of debt, or covenant, to the



value of such lands, but the lands shall not be liable to execution.

7. Where an action of debt or covenant is brought against the heir, he may plead *riens, per descent*.

8. Devisees to be liable the same as heir, though land may be aliened before action brought.

9. Traders' real estates to be assets, to be administered in courts of equity, and the heir and devisee of such traders shall be liable at the suit of simple contract creditors, as well as of specialty creditors, who shall still retain their priority.

10. Parol not to demur in suits by or against infants.

11. Infants, heirs, or devisees, shall convey, under order of a court of equity, lands decreed to be sold, [or mortgaged,]<sup>m</sup> for the payment of debts, [or a single debt.]<sup>n</sup>

12. Where, by a devise, lands shall be vested in any persons for life or other limited interest, with any remainder, limitation, or gift, over which may be vested in some person from whom a conveyance cannot be obtained, or, by way of executory devise, and a decree shall be made for the sale thereof, for the payment of debts, the person having the limited estate may convey the fee.

13. Act not to repeal the Irish statute, 33d George I., (meaning George II., cap. 14.) relating to debts due by bankers.

*Charge of Simple Contract Debts on Real Estate.*  
3d and 4th WILLIAM IV., cap. 104.—[Royal Assent,  
August 29, 1833.]

An Act to render Freehold and Copyhold Estates Assets for the Payment of Simple\* and Contract Debts.

Sec. 1. That, after the passing of this act, when any person shall die, seised of, or entitled to, any estate, or interest in lands, tenements, or heredita-

\* *Sic.*

<sup>m</sup> 2d and 3d Victoria, cap. 60.

<sup>n</sup> *Scholfield v. Heafield*, 8 Sim. 470.

ments, corporeal or incorporeal, or other real estate, whether freehold, customaryhold, or copyhold, which he shall not, by his will, have charged with or devised, subject to the payment of his debts, the same shall be assets to be administered in courts of equity for the payment, as well of simple contract as specialty debts; provided that all creditors by specialty, in which the heirs are bound, shall be paid before the creditors by simple contract, or by specialty, in which the heirs are not bound.

*Imprisonment for Debt.*

1st and 2d VICTORIA, cap. 110.—[Royal Assent,  
August 16, 1838.]

An Act for Abolishing Arrest on Mesne Process in Civil Actions, except in Certain Cases; for Extending the Remedies of Creditors against the Property of Debtors; and for Amending the Laws for the Relief of Insolvent Debtors in England.

Sec. 1. Arrest on mesne process abolished, except in certain cases.

2. All personal actions in the superior courts of law at Westminster shall be commenced by writ of summons.

3. A writ of *capias* may be issued on the order of a judge, in cases where it shall appear, on the affidavit of the plaintiff, or some other person, that the plaintiff has a cause of action, or sustained damage to the amount of L.20, "and that there is probable cause" for believing that the defendant, or any one or more of the defendants, is or are about to quit England, unless he or they be forthwith apprehended.

4. The sheriff may arrest, within one month from the date of *capias*, defendant to remain in custody until he finds bail, or makes a deposit as heretofore.

5. Such order and arrest may be made at any time before final judgment.

6. Defendant may apply for his discharge forthwith, and order made on such application may be appealed from.

7. Prisoners in custody on mesne process who may have not, at the commencement of the act, filed petitions, under insolvent acts, entitled to be discharged.

8. If any creditor or creditors, entitled to be petitioning creditors under the bankrupt laws, file an affidavit in the court of bankruptcy, that his or their debt is due, and that the debtor is a trader within the meaning of the bankrupt laws, and serve such debtor personally with a copy of such affidavit, and with a notice, requiring immediate payment of such debt, and such trader shall not, within twenty-one days after personal service of such affidavit and notice, "pay such debt or debts, or secure, or compound for the same to the satisfaction of such creditor or creditors, or enter into a bond in such sum, and with such two sufficient sureties as a commissioner of the court of bankruptcy shall approve of, to pay such sum or sums as shall be recovered in such action, which shall have been brought, or shall thereafter be brought, together with such costs as shall be given in the same, or to render himself to the custody of the gaoler of the court in which such action shall have been brought, after the recovery of judgment, such trader shall be deemed to have committed an act of bankruptcy, on the 22d day after service of such affidavit and notice;" provided a fiat issues within two calendar months from the filing of such affidavits.

9. Warrants of attorney and cognovits given to any person shall be void, unless executed in the presence of some attorney "expressly named by him, and attending at his request, to inform him of the nature and effect of such warrant or cognovit before the same is executed, which attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be attorney for the person executing the same, and state that he subscribes as such attorney."

10. Warrants of attorney and cognovits not executed in manner aforesaid "shall not be rendered

valid by proof that the person executing the same did, in fact, understand the nature and effect thereof, or was fully informed of the same."

11. Executions made effectual against "all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold, or customary tenure, as the person against whom execution is so sued, or any person in trust for him, shall have been seised or possessed of at the time of entering up the said judgment, or at any time afterwards, or over which such person shall, at the time of entering up the said judgment, or at any time afterwards, have any disposing power which he might, without the assent of any other person, exercise for his own benefit." In case of copyholds, the creditor shall be entitled to hold the same until the amount of the payments and value of the services due in respect thereof, as well as the amount of the judgment, shall be levied. Writ of elegit to have no greater effect than heretofore, as against purchasers, mortgagees, and creditors, at the commencement of the act.

12. Money, bank-notes, checks, bills of exchange, promissory-notes, bonds, specialties, or other securities for money belonging to the debtor, may be seized under a *fiery facias*, the sheriff shall deliver the money and bank-notes to the creditor, and retain the checks, &c., and sue upon them in his own name, upon the creditor entering into a bond with two securities for indemnifying him for the costs of so doing.

13. Judgments shall operate as a charge upon all lands, &c., and be binding upon debtor, "and against all persons claiming under him after such judgment," "and against the issue of his body, and all other persons whom he might, without the assent of any other person, cut off and debar from any remainder, reversion, or other interest in such lands," &c., and every judgment-creditor shall have the same remedies in a court of equity as he would be entitled to in case such debtor had power to charge, and had, by

writing under his hand, agreed to charge such hereditaments with the amount of such judgment-debt, and interest thereon, provided that no proceeding in equity be taken till after one year from entering up the judgment, and that such charge shall not give the judgment-creditor any preference in case of the debtor's bankruptcy, unless such judgment shall have been entered up one year before the bankruptcy, saving as to purchasers, mortgagees, and creditors, at the commencement of the act, and saving of the doctrine of courts of equity, whereby protection is given to purchasers for valuable consideration without notice.

14. Stock and shares in public funds and public companies belonging to the debtor, whether standing in his own name or in the name of a trustee for him, may be charged by the order of a judge, which "shall entitle the judgment-creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment-debtor;" provided that no proceedings are taken thereon until after six calendar months from the date of the order.

15. Order of judge to be made in the first instance *ex parte*, and on notice to the bank or company to operate as a distringas. Unless the debtor, within a time to be mentioned in such order, should show good cause to the contrary, the order will be made absolute, and render invalid, as against the judgment-creditor, any disposition made by the debtor in the meantime.

16. Securities not realized to be relinquished, if the debtor's person be taken in execution.

17. Judgment-debts shall carry interest at the rate of L.4 per cent. per annum, from the time of entering up the judgment, or the commencement of the act, if previously entered up.

18. Decrees and orders of court of equity, rules of courts of law, orders of the lord chancellor, and court of review in bankruptcy, and orders of the lord chancellor in lunacy, whereby any sum of money or costs shall be payable, shall have the effect of

judgments, and the powers by the act given to judges of the superior court of common law, with respect to matters depending before them, may be exercised by the courts of equity with respect to matters before them.

19. No such judgment, decree, order, or rule, shall have effect under the act as against purchasers, mortgagees, or creditors, unless and until a memorandum or minute containing the name, and the usual or last known place of abode, and the title, trade, or profession of the person whose estate is intended to be affected thereby, and the court and the title of the cause or matter in which such judgment, decree, order, or rule, shall have been obtained or made, and the date thereof, and the account of the debt, &c., recovered or ordered to be paid, shall be left with the senior master of the common pleas, who shall forthwith enter the same particulars<sup>o</sup> in a book, which all persons may search on payment of one shilling.

20. New writs to be framed.

21. Powers, &c., of the act applicable to the courts and judges of Westminster, to be applicable to the courts of Lancaster and Durham, under certain restrictions.

22. Authorises the removal of judgments of inferior courts, of which the judge, assessor, or assistant, shall be a barrister of not less than seven years' standing, and gives to them the validity of a judgment of a superior court, and the remedies for enforcing them, upon being removed, and upon the writ of execution thereon being delivered to the sheriff.

23. to 122. Are a re-enactment, with some alterations,<sup>\*</sup> of the acts for the relief of insolvent debtors.

123. Commencement of act, 1st October 1838.

<sup>o</sup> And also the date on which the memorandum is left.  
*Vide infra*, p. 168.

<sup>\*</sup> In analogy to the recent alteration in the bankrupt law, the 45th section enacts, that the estate and effects of the insolvent shall vest in the assignee by virtue of his appointment, without any conveyance or assignment.

*Dower.*

3d and 4th WILLIAM IV., cap. 95.—[Royal Assent,  
August 29, 1833.]

An Act for the Amendment of the Law relating to Dower.

Sec. 1. Meaning of words used in the act.

2. Widows to be entitled to dower out of equitable estates.

3. Seisin not to be necessary to give title to dower.

4. Estates, if absolutely disposed of by husband in his lifetime, not to be liable to dower.

5. Partial estates and charges, created by husband by any disposition or will, shall be vested against the right of dower.

6. and 7. Dower may be barred by a declaration of the husband in a deed, or by a declaration in the husband's will.

8. Dower to be subject to conditions declared by the husband's will.

9. Devise of any estate to the widow by her husband to be a bar of dower in all his lands, unless a contrary intention shall be declared by the will.

10. Bequest of personal estate to the widow not to bar her dower unless so declared.

11. Agreement not to bar dower may be enforced.

12. Legacies in bar of dower to be still entitled to preference over other legacies.

Dower ad ostium ecclesie, or ex assensu patris, abolished.

13. Act not to extend to the dower of any widow married before 2d January 1834, nor to give any will or other instrument made before that day the effect of defeating or prejudicing any right of dower.

*Fines and Recoveries.*

3d and 4th WILLIAM IV., cap. 74.—[Royal Assent,  
August 28, 1833.]

An Act for the Abolition of Fines and Recoveries, and for the Substitution of more simple Modes of Assurance.

Sec. 1. Definitions of words in the act, namely, "*Lands*" shall extend to corporeal and incorporeal hereditaments of any tenure but copyhold, except when accompanied by some expression denoting that tenure; "*Estate*" shall extend to legal and equitable estates, and to any legal or equitable charge or lien on lands or money, subject to be vested on the purchase of land; "*Base-fee*," that estate in fee-simple into which an estate tail is converted, where the issue in tail, but not the remainders, are barred; "*Estate tail*," in addition to its usual meaning, shall mean a base-fee, into which an estate tail shall have been converted; "*Actual tenant in tail*" shall mean exclusively the tenant of an estate tail which shall not have been barred, and such tenant shall be deemed an actual tenant in tail, although the estate tail may have been divested and turned to a right; "*Tenant in tail*" shall mean not only an actual tenant in tail, but also a person who, where an estate tail shall have been barred and converted into a base-fee, would have been tenant of such estate tail if the same had not been barred; "*Tenant in tail entitled to a base-fee*" shall mean a person entitled to a base-fee, or to the ultimate beneficial interest in a base-fee, and who, if the base-fee had not been created, would have been actual tenant in tail; and the expression, "*Money subject to be invested in the purchase of lands*," shall include money whether raised or to be raised, stocks, funds, real and other securities, the produce of which is directed to be invested in the purchase of lands, and the lands to be purchased with such money or produce shall extend to copyhold lands, and lands of any tenure in Ireland or elsewhere out of England, where such lands are within the meaning of the provision authorising the purchase; "*Person*" shall extend to a body politic, corporate, or collegiate, as well as an individual, and every assurance, whether



by deed, will, private act of Parliament, or otherwise, by which lands shall be or directed to be entailed, shall be deemed "*A settlement*;" every appointment shall be considered as part of the settlement authorising it; the death of the testator shall be considered the time when a settlement by will was made.

2. No fine or recovery shall be levied or suffered after 31st December 1833, except where a writ of *dedimus*, or other writ, shall have been previously sued out.

3. Persons liable after 31st December 1833 to levy fines, or suffer recoveries under covenants entered into before 1st January 1834, may effect the purposes intended by a disposition under the act; but in any case where the purpose of a fine or recovery cannot be so effected, a deed shall be executed by the persons liable to levy fines or suffer recoveries by which such person shall declare his desire, that the same shall have the same operation as the fine or recovery.

4. Fines and recoveries of lands in ancient *demesne*, when levied or suffered in a superior court, may be reversed as to the lord by writs of *deceit*, the proceedings in which are now pending, or by writs of *deceit* hereafter to be brought; but shall be as valid against the parties and persons claiming under them as if not reversed as to the lord.

5. Fines and recoveries of lands in ancient *demesne*, when levied or suffered in the manor court, after other fines and recoveries have been previously levied or suffered in a superior court, shall be as valid as they would have been if the tenure had not been changed; and fines and recoveries shall not be invalid in other cases, though levied or suffered in courts whose jurisdictions may not extend to the lands therein comprised, or which may be unlawful, or held without due authority.

6. The tenure of ancient *demesne*, where suspended or destroyed by fine or recovery in a superior court, restored in those cases in which the rights

of the lord of the manor shall have been recognised within the last twenty years preceding the 1st of January 1834, and no writ of deceit shall be brought after 1833.

7. Fines having errors or mistakes in the parcels or parties, apparent from the deeds declaring the uses, shall be valid without amendment. Amendment of fines and recoveries.

8. Recoveries having errors or mistakes in the parcels or parties, apparent from the deeds making the tenants to the writs of entry, shall be valid without amendment.

9. The jurisdiction of courts to amend fines and recoveries in cases not provided for by this act, not taken away.

10. No recovery shall be invalid in consequence of the neglect to enrol the bargain and sale purporting to make the tenant to the writ of entry, provided the same would have been valid if the bargain and sale had been enrolled.

11. Recoveries invalid in consequence of there not being proper tenants to the writs of entry made valid, in case the persons having the beneficial estates in possession shall have conveyed such estate to the tenants to the writs in due time.

12. Act shall not give validity to defective fines and recoveries, wholly or partially reversed, or where any person, who would have been barred has had dealings on the faith of the same being invalid, or which any court shall have refused to amend.

13. The records and proceedings of fines and recoveries in the Courts of Common Pleas at Westminster and Lancaster, and in the Court of Pleas at Durham, shall be kept as the respective courts and justices shall direct; and searches may be made, and extracts and copies obtained as heretofore, while in the custody of the present persons; and when kept by other persons, then as shall be ordered by the court or justices having control over the same.

14. Estates tail and estates expectant thereon no longer barrable by warranty.

Tenant in tail  
empowered to  
convey.

15. After the 31st of December 1833, every actual tenant in tail in possession, remainder, contingency, or otherwise, shall have full power to dispose of the lands entailed, in fee-simple absolute, or for any less estate, as against all persons claiming the lands entailed by force of any estate tail which shall be vested in, or might be claimed by, or which, but for some previous act, would have been vested in, or might have been claimed by, the person making the disposition at the time of his making the same, including her majesty, but saving the rights of all persons in respect of estates prior to the estate tail in respect of which such disposition shall be made, and the rights of all other persons, except those against whom such disposition is by this act authorised to be made.

Tenants in tail  
*ex provisione*  
*vir.*

16. The power of disposition shall not be exercised by women tenants in tail, *ex provisione viri*, under 11 Hen. VII. cap. 20, by virtue of a settlement made before passing of the act, except with such assent as required by the former act.

17. Except as to lands in settlements made before the passing of this act; the 11 Hen. VII. c. 20, repealed.

18. The power of disposition shall not extend to tenants in tail restrained by the 34 and 35 Hen. VIII. c. 20, or by any other act; nor to tenants in tail after possibility of issue extinct.

19. After the 31st of December 1833, every person who would have been actual tenant in tail of lands if his estate tail had not been converted into a base-fee, shall have full power to dispose of the lands so as to enlarge the base-fee into a fee-simple absolute, saving as aforesaid.

20. Act shall not extend to enable issue inheritable to estates tail to bar their expectancies.

Dispositions  
for a limited  
purpose.

21. A disposition under the act by a tenant in tail by way of mortgage, or for any limited purpose, shall, to the extent of the estate thereby created, be a bar in equity as well as at law; but if for an estate

*pour autre vie*, or for years, or to create a charge without a term for raising the same, the disposition shall in equity be a bar only so far as to give effect to the limited purpose.

22. Where there shall be under a settlement of Protector. any lands, an estate for years determinable on any life, or any greater estate, (not being an estate for years,) prior to an estate tail created by the same settlement, the owner of such prior estate, or the first of such prior estates, shall be the protector of the settlement, even though the same may be incumbered to the full value thereof, and although such owner may, by his bankruptcy or other act, have disposed thereof, and an estate, by the courtesy in respect of the estate tail, or of any prior estate created by the same settlement, and an estate by way of resulting use or trust for the settler, shall be an estate within the meaning of the clause.

23. Each of two or more owners of a prior estate shall be the sole protector, to the extent of his undivided share.

24. Where the prior estate of a married woman shall not be settled to her separate use, she and her husband together shall be the protector; and where settled to her separate use, she alone shall be the protector.

25. An estate limited by a settlement by way of confirmation or restoration of a previous estate, shall, so far as regards the protector, be an estate under such settlement.

26. The owner of a lease at a rent created or confirmed by a settlement, shall not be the protector.

27. No woman in respect of her dower, and (except in the case of a bare trustee under a settlement made before 1834) no bare trustee, heir, executor, administrator, or assign, as such, shall be the protector.

28. Where the owner of the prior estate shall by the two last clauses not be the protector, the person

who, if such estate did not exist, would be the protector, shall be the protector.

29. When an estate under a settlement shall have been disposed of before 1834, the person who, in respect of such estate, would have been the proper person to make the tenant to the writ of entry in a recovery, shall be the protector during the continuance of such estate.

30. In the case of a disposition of a reversion in fee, or any estate thereout, before 1834, the person to make the tenant to the writ of entry in a recovery shall be the protector.

31. A bare trustee shall be the protector where, under a settlement made before the passing of this act, he shall be the person to make the tenant to the writ of entry in a recovery.

32. A settlor may, by the settlement entailing the lands, appoint any number of persons *in esse* not exceeding three, and not being aliens, to be protectors, and may by a power in the settlement perpetuate the protectorship, and the person who, but for this clause, would have been protector, may be one of the persons to be appointed protector, the deeds appointing to or relinquishing such office must be enrolled under the act.

33. The lord chancellor, lord keeper, lords commissioners, or other persons entrusted with lunatics, shall act as protectors where the protector shall be lunatic, whether found such by inquisition or not, but in cases where the protector shall be convicted of treason or felony, or (not being the owner of a prior estate) shall be an infant, or it shall be uncertain whether he is living, or where a settler shall in the settlement declare, that the person who, as owner of a prior estate under the settlement, would be protector, shall not be protector, and shall not appoint any person in his stead, or where, during the continuance of a prior estate sufficient to qualify a person to be protector, there shall be no protector, the Court of Chancery shall be protector.

34. Where there is a protector, his consent shall be requisite to enable an actual tenant in tail, who is not entitled to the immediate reversion in fee, to make an absolute disposition under this act. Without such consent an actual tenant in tail may create a base-fee.

35. Where there is a base-fee and a protector, his consent shall be as requisite to enable the person who would have been tenant of the estate tail, if not barred, to exercise the power of disposition, as if the estate had not been barred.

36. The protector shall be subject to no control from courts of equity or otherwise, in the exercise of his power of consenting, and an agreement by him to withhold his consent shall be void.

37. The rules of equity as to dealings between the donee of a power, and any object of the power, shall not apply to dealings between the protector of a settlement and a tenant in tail under the same.

38. A voidable estate by a tenant in tail in favour of a purchaser, shall by any subsequent disposition by him whatsoever other than a lease not requiring enrolment, if no protector, or being such, with his consent be confirmed, if there be a protector, and he shall not consent, the voidable estate shall only be confirmed to the extent the tenant in tail could do so without such consent ; but the estate shall not be confirmed against a purchaser for valuable consideration without express notice of the voidable estate.

Confirmation  
of voidable  
estates.

39. Whenever a person entitled to a base-fee shall become entitled to the immediate reversion in fee, the base-fee shall not merge, but shall be enlarged.<sup>p</sup>

Enlargement  
of base-fee.

40. Any disposition by a tenant in tail under this act shall be effected by some assurance by deed, (not being an agreement or will,) by which he could have conveyed if seised in fee, and if a married woman,

Instrument  
by which ten-  
ant in tail  
may convey.

<sup>p</sup> The effect of this provision will be, to prevent any incumbrances upon the reversion from taking effect, which they would do if the base-fee were to merge.

her husband's concurrence shall be necessary, and the deed effecting the disposition shall be acknowledged by her as after directed, no contract, though evidenced by a deed for a valuable consideration, shall be of any force under the act.

Enrolment.

41. No assurance by which a tenant in tail shall make a disposition under the act, (except a lease not exceeding twenty-one years, to commence from the date, or within twelve months thereof, where a rack-rent or not less than five-sixths parts thereof shall be reserved,) shall have any operation under this act unless enrolled in Chancery within six calendar months from the creation thereof, and a bargain and sale, if so enrolled, shall be good, though not enrolled within six<sup>a</sup> months, according to the statute of enrolments.

Consent of protector.

42. Consent of the protector shall be given by the same assurance by which the disposition shall be effected, or by a distinct deed executed on or before "the day on which the assurance shall be made."

43. If the protector consent by a deed distinct from the assurance, it shall be considered unqualified, unless he refer to the assurance, and confine his consent to the disposition thereby made.

44. Protector having given his consent cannot revoke the same.

45. A married woman protector may consent as if she were a feme-sole.

46. The consent of a protector, if by a distinct deed, void, unless the deed be enrolled with or before the assurance.

47. Courts of equity excluded from giving any effect to dispositions by tenants in tail, or consents of protectors of settlements, which in courts of law would not be effectual.

48. The lord chancellor, lord keeper, or lords commissioners, or other persons entrusted with lunatics, or the Court of Chancery when protector,

<sup>a</sup> Lunar.

shall have power, upon motion or petition, to consent to the disposition by a tenant in tail, and to make such orders as shall be thought necessary ; and if any other person shall be joint protector, the disposition shall not be valid without his consent.

49. Such orders of the lord chancellor, &c., shall be sufficient evidence of consent.

50. The previous clauses shall apply to copyholds, Estates tail in copyholds. except that disposition of legal estates therein shall be by surrender, and of equitable estates either by surrender or by deed as after provided, and except so far as they are varied by the clauses after contained.

51. If the protector of a settlement of copyholds shall by deed consent to the disposition of a tenant in tail, such deed shall, at or before the surrender by the tenant in tail, be produced to the lord of the manor, or his steward or deputy, otherwise the consent shall be void ; and the lord, or steward, or deputy, shall by indorsement on the deed acknowledge such production, and enter such deed and indorsement on the rolls, and the indorsement shall be evidence of such production, and he shall indorse on the deed a memorandum of the entry.

52. If the consent of the protector of a settlement of copyholds shall not be by deed, it shall be given to the person taking the surrender of the tenant in tail ; and if the surrender be out of court, the consent shall be stated in the memorandum of surrender, and the memorandum signed by the protector shall be entered on the rolls, and shall be good evidence of the consent and surrender ; but if the surrender be in court, the lord, or steward, or deputy, shall enter the surrender on the rolls, with a statement that such consent had been given ; and the entries or copies thereof shall be evidence, as other entries or copies.

53. An equitable tenant in tail of copyholds may by deed dispose of the same under this act as if freehold, and such deed shall be entered on the rolls. If a protector, and his consent be given by a distinct deed, the consent shall be void, unless the deed be



executed on or before the day on which the deed of disposition shall be executed, and such deed shall be entered on the rolls. Such entries shall be imperative on the lord, or steward, or deputy, and he shall indorse on such deed a memorandum of the entry. The deed of disposition void against persons claiming under an assurance for valuable consideration entered on the rolls previously to such disposition being so entered.

54. No enrolment of dispositions of copyholds under this act, except entry on the court rolls, shall be necessary.

Bankrupt's  
estates tail.

55. Repeal of the bankrupt act, 6th George IV, cap. 16, sec. 55, so far as relates to estates tail in England and Ireland, but such repeal shall not extend to lands of a bankrupt under a commission or fiat issued before 1834, nor to revive former acts.

56. In the case of a person becoming bankrupt after 1833, any commissioner acting under the fiat shall by deed dispose of any estate tail which he may be entitled to before obtaining his certificate to a purchaser, and thereby create as large an estate as the actual tenant in tail could have done under this act, if not bankrupt; but if there be a protector who will not consent, then the estate shall be as large as such actual tenant in tail, if not bankrupt, could have created without such consent.

57. The commissioner, in the case of a tenant in tail entitled to a base-fee being bankrupt, and if there be no protector, shall by deed dispose of the land to a purchaser, and thereby enlarge such base-fee to the same extent as the bankrupt might have done.

58. Where there is a protector, a disposition by the commissioner, with his consent, shall have the same effect as if made by the bankrupt himself with such consent.

59. Every deed of disposition by the commissioner as to lands not copyhold, shall be enrolled in Chancery within six calendar months, and as to copy-

hold lands, shall be entered on the court rolls, and if as to copyhold lands the protector consent by a distinct deed, such deed must be executed on or before the day on which the deed of disposition shall be executed by the commissioner, and shall be entered on the court rolls. Such entries shall be imperative on the lord, and he shall indorse on each deed a memorandum of the entry. Bankrupt's estates tail.

60. If the commissioner shall under this act dispose of the lands of an actual tenant in tail becoming bankrupt, and in consequence of there being a protector who shall not consent, a base-fee only shall be created, such base-fee, if during its continuance there cease to be a protector, shall be enlarged.

61. If a tenant in tail entitled to a base-fee become bankrupt, such base-fee, if sold or conveyed under the bankrupt acts, and if during its continuance there shall cease to be a protector, shall be enlarged.

62. A voidable estate created in favour of a purchaser by an actual tenant in tail, or a tenant in tail entitled to a base-fee who shall become bankrupt, shall by any disposition of the commissioner under this act, if no protector, (or being such with his consent,) be confirmed. If, in the case of an actual tenant in tail, there be a protector, and he shall not consent, then the voidable estate shall be confirmed, so far as such tenant in tail, if not bankrupt, could have confirmed the same without such consent; and if after the disposition by the commissioner there shall cease to be a protector, then the voidable estate shall be confirmed as against all persons except a purchaser, without express notice of the voidable estate.

63. All acts of a tenant in tail becoming bankrupt, and which if he had been seised in fee would have been void against the assignees, shall be void against any disposition under this act by the commissioner.

64. Subject to the powers given to the commissioner, and to the estate in the assignees, a bankrupt actual tenant in tail, or a bankrupt tenant in tail en-

Bankrupt's  
estates tail.

titled to a base-fee, shall retain his powers of disposition under the act.

65. The disposition by the commissioner of the lands of a bankrupt tenant in tail, or tenant in tail entitled to a base-fee, although the bankrupt be dead at the time of disposition, shall have the same operation as if he were alive in the following cases:—1. If no protector at the death. 2. If the bankrupt had been actual tenant in tail, and at the time of the disposition there be issue inheritable, and also either no protector, or a protector who shall consent to the disposition, or a protector who shall not consent to the disposition. 3. If the bankrupt had been tenant in tail entitled to a base-fee, and at the time of the disposition there be issue, who, if the base-fee had not been created, would have been actual tenant in tail, and also either no protector, or a protector who shall consent to the disposition.

66. Every disposition by the commissioner of copyhold lands, where the estate shall not be equitable, shall have the same operation as a surrender, and the person to whom such lands shall have been disposed of by the commissioner may claim to be admitted, as if such surrender had been actually made, on paying the fines, fees, and other dues.

67. The assignees, until the disposition by the commissioner of the lands of a bankrupt, of which such commissioner has power to make disposition under the act, or until it shall be ascertained that such disposition shall not be required, shall receive the rents of the lands, and shall recover the same, and enforce covenants and conditions against the lessees of such lands as if entitled to the reversion, this clause shall apply to copyhold lands, but as to other lands, only to such as the commissioners may have power to dispose of after the bankrupt's death.

68. All the provisions of the act for the benefit of the creditors of bankrupts, and for the confirmation of their voidable estates, shall apply to their lands in Ireland, saving the rights of the crown.

69. Deeds relating to the lands of bankrupts in Ireland shall be enrolled in Chancery there, within six calendar months.

70. Repeal of the statute 7th George IV., cap. 45, respecting entailed estates to be purchased with trust moneys, except as to proceedings commenced before the 1st January 1834; 39th and 40th George III., cap. 56, not to be revived.

71. Lands of any tenure to be sold where the purchase-money is subject to be invested in the purchase of lands to be entailed, and also money subject to be invested in like manner, shall be subject to the same estates as the lands, if purchased, and the previous clauses shall apply, so far as circumstances will admit.

Money to be  
laid out in  
lands to be  
entailed.

72. Lands of any tenure in Ireland to be sold where the purchase-money is subject to be invested in the purchase of lands to be entailed, and money under the control of a court of equity in Ireland, subject to be invested in like manner, shall be subject to this act in cases of bankruptcy, the deed relating to the land to be enrolled in Ireland, to the money in England.

73. Practice of requiring deeds to be acknowledged before enrolment shall not apply to deeds to be enrolled under this act.

74. Every deed required to be enrolled, by which lands or money subject to be invested in the purchase of lands, shall be disposed of under this act, shall take effect as if enrolment had not been required, except against a purchaser for valuable consideration, claiming under a subsequent deed previously enrolled.

75. The Court of Chancery shall regulate the fees to be paid for the enrolment of deeds, and for searches and office-copies.

76. The Court of Common Pleas shall regulate the fees to be paid for entries on court-rolls, and for indorsements on deeds, and for taking consents and

surrenders in cases of dispositions by tenants in tail of copyholds.

*Alienation by Married Women.*

77. After the 31st December 1833, a married woman, in every case, except that of being tenant in tail, may by deed dispose of lands of any tenure, and money subject to be invested in the purchase of lands, and dispose of, release, surrender, or extinguish any estate therein, and may release or extinguish powers as if she were a feme-sole; but to render the same valid, her husband must concur, and the deed must be acknowledged by her as after mentioned. Not to extend to copyholds, where before this act she and her husband could have effected the same by surrender.

78. The powers of disposition given to a married woman by this act shall not interfere with any other powers she may have, except so far as the same may be affected by her disposition.

79. Every deed by a married woman for any of the purposes of this act, except such as may be executed by her as protector, shall be produced and acknowledged by her before a judge or master in Chancery, or two of the perpetual commissioners, or two special commissioners.

80. The judge, master in Chancery, or commissioners, before receiving the acknowledgment of a deed by a married woman, shall examine her apart from her husband, and, unless she freely consent, shall not permit her to acknowledge the deed.

81. The lord chief justice of the Common Pleas shall appoint perpetual commissioners for each county, for taking acknowledgments; and lists of the commissioners for each county shall be made out, and kept by the officer of the Common Pleas, who is to have the custody of the certificate after mentioned; and such officer shall transmit to the clerk of the peace for each county a copy of the list for that

Perpetual  
commission-  
ers.

county, and shall deliver a copy of the list for any county to any person applying; and the clerk of the peace shall deliver a copy of the list last transmitted to him to any person applying.

82. Perpetual commissioners may take acknowledgments of any married woman wherever she may reside, and wheresoever the lands or money may be.

83. If, from being beyond seas, ill health, or any other sufficient cause, the acknowledgment cannot be taken by a judge, master in Chancery, or perpetual commissioners, the Court of Common Pleas, or any judge thereof, may appoint special commissioners for the purpose.

84. When a married woman shall acknowledge a deed, the judge, master in Chancery, or commissioners, shall sign a memorandum, on the back, or at the foot, or in the margin of the deed, to the effect mentioned in the act, and shall also sign a certificate of the taking of such acknowledgment, to be engrossed on a separate piece of parchment, which certificate shall be to the effect mentioned in the act.

85. Every certificate, with an affidavit verifying the same, shall be filed by some officer of the Common Pleas.

86. On the filing of the certificate, the deed shall, as to the disposition by such married woman, take effect from the time of its having been acknowledged.

87. The officer with whom the certificates are lodged shall make and keep an index of the same.

88. After the filing of the certificate, the officer shall deliver a copy thereof signed by him, which shall be evidence of the acknowledgment.

89. The chief justice of the Common Pleas shall appoint the officer with whom the certificates shall be lodged; and the Court of Common Pleas shall make orders touching the examination, memorandums, certificates, and affidavits, and the time when the proceedings shall take place, and the amount of fees.

90. A married woman shall be separately examined. Alienation of copyholds.

mined on the surrender of copyholds, to which she alone, or she and her husband in her right, may be entitled for an equitable estate, as if such estate were legal.

91. Power to the Court of Common Pleas, in the case of a husband being lunatic, or otherwise incapable of executing a deed, or making a surrender of copyholds, or of his residence being unknown, or of his living separate from his wife, by an order on the application of the wife, to dispense with his concurrence in any case, except where the Lord Chancellor, Lord Keeper, or Lords Commissioners, or other persons entrusted with lunatics, or the Court of Chancery, shall be the protector of a settlement in lieu of the husband.

92. Act not to extend to Ireland, except where expressly mentioned.

*Custody of Infants.*

2d and 3d VICTORIA, cap. 54.—[Royal Assent, 17th August 1839.]

An Act to Amend the Law relating to the Custody of Infants.

Sec. 1. The Lord Chancellor and Master of the Rolls, upon the petition of the mother of any infant in the sole custody or control of the father, or of any person by his authority, or of any guardian after the death of the father, may make order for her access to such infant, or (if the child be under that age) for the delivery of such infant to her till the age of seven.

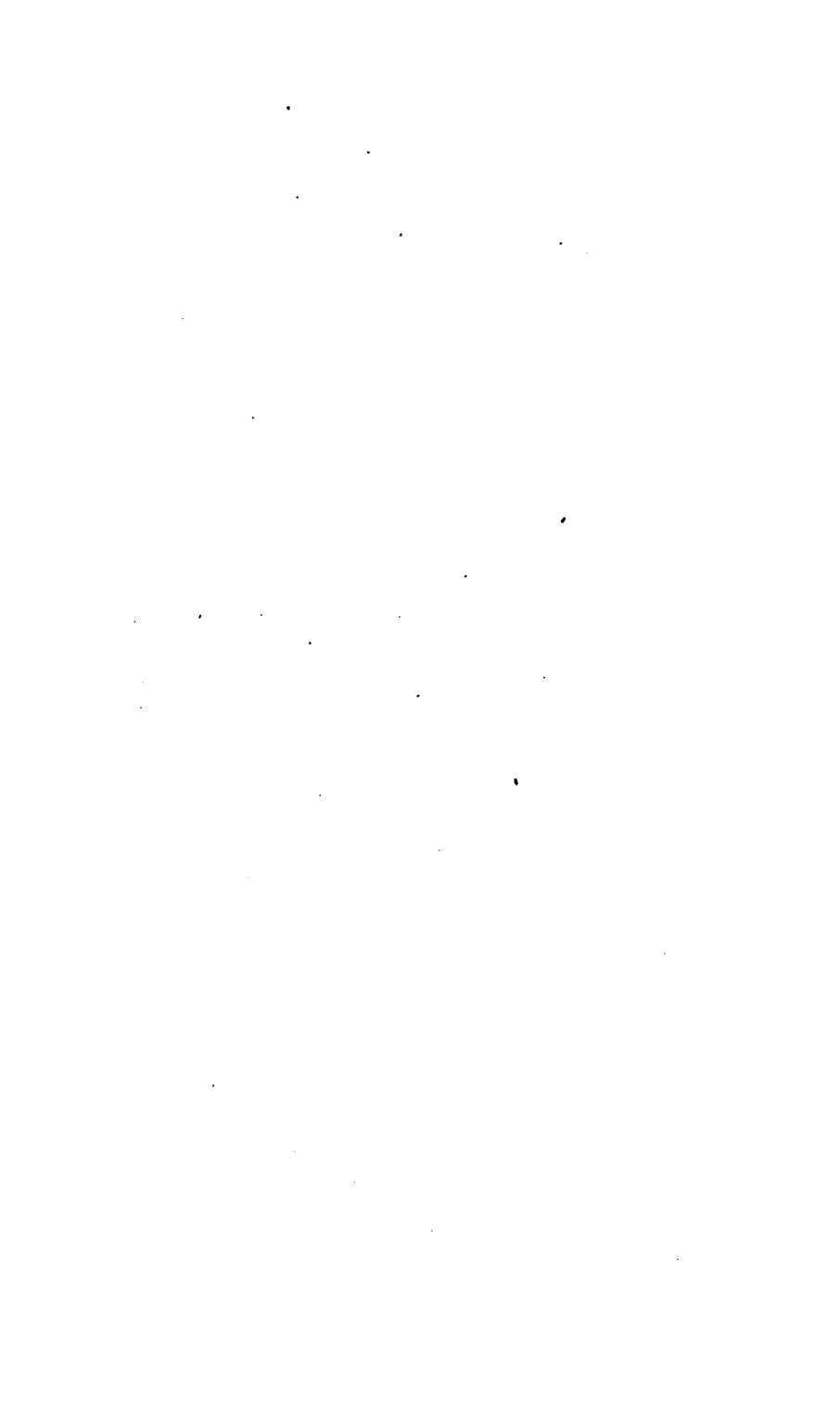
2. Affidavits may be received on such complaints.

3. Orders may be enforced by process of contempt.

4. No mother against whom adultery shall be established shall be entitled to the benefit of the act.

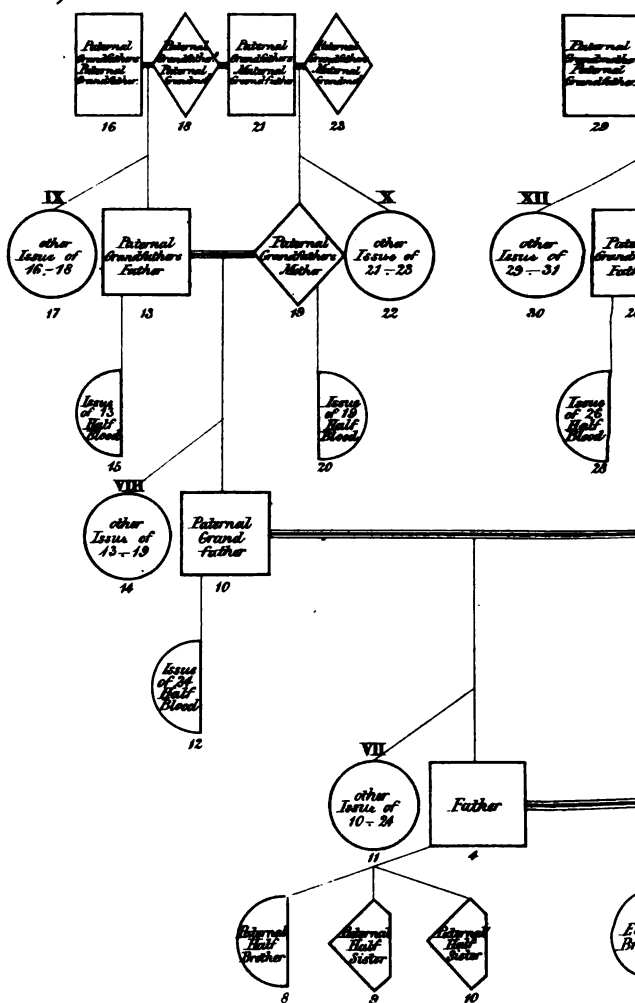








# PATERNAL LINE



The Roman Numerals indicate the course of descent before the alterations made by the Stat. 3 & 4. Will. 4 cap. 106. and the Arabic Numerals indicate the course of descent since these alterations.

*Inheritance.*

3d and 4th WILLIAM IV., cap. 106.—[Royal Assent,  
August 29, 1833.]

An Act for the Amendment of the Law of  
Inheritance.

Sec. 1. Definitions of words used in the act.

2. Descent to be always traced from the purchaser, but the person last entitled to be considered the purchaser, unless it be proved that he inherited the same from any person, which person shall be considered the purchaser, unless it be proved that he inherited the same, and so on.

3. An heir entitled under a will of a testator dying after 1833, to take as devisee, and a limitation to the grantor or his heirs by an assurance executed since 1833, shall create an estate by purchase.

4. Where heirs take by purchase under limitations to the heirs of their ancestor in assurances executed since 1833, or wills of persons dying after 1833, the land to descend as if the ancestor had been the purchaser.

5. Brothers and sisters to trace their descent through their parent.

6. The nearest lineal ancestor shall be heir next to the issue, and in preference to any person tracing his descent through him, or claiming in consequence of there being no descendant of such lineal ancestor.

7. The male line to be preferred.

8. The mother of a more remote male ancestor to be preferred to the mother of the less remote male ancestor.

9. Half blood, if on the part of a male ancestor, to inherit after the whole blood of the same degree, if on the part of a female ancestor, after such female ancestor.

10. After the death of a person attainted, his descendants may inherit.

11. The act not to extend to any descent before January 1834.

12. Limitations made before 1st January 1834, to

the heirs of a person then living to take effect, as if the act had not been made.

*Protection against Judgments, &c.*

2d VICTORIÆ, cap. 11.—[Royal Assent, 4th June 1839.]

An Act for the Better Protection of Purchasers against Judgments, Crown Debts, Lis pendens, and Fiats in Bankruptcy.

Sec. 1. No judgments shall be hereafter docketed.

2. Judgments docketed and entered at the passing of the act shall not, after 1st August 1841, "affect any lands, tenements, or hereditaments as to purchasers, mortgagees, or creditors," unless, and until such memorandum as prescribed in the 1st and 2d Vict. 110, is left with the senior Master of the Common Pleas.

3. The date, when the memorandum is left, shall be inserted in the Master's book.

4. Judgments, decrees, orders, and rules, shall be void against purchasers, mortgagees, and creditors, after five years from the entry thereof, unless re-entered within five years before the execution of the conveyance, or the accruer of the right of the creditor.

5. Judgments, &c., duly registered, shall not affect purchasers or mortgagees without notice otherwise, or more extensively than judgments duly docketed would have done before the 1st and 2d Vic., cap. 110.

6. This act, and the 1st and 2d Vic., not to revive judgments already extinguished, or prejudice judgments between the parties or their representatives, or persons claiming as volunteers.

7. Purchasers and mortgagees, without express notice, are not to be affected by any lis pendens, unless suit is registered with the Master of the Common Pleas.

8. Judgments, statutes, and recognizances to or in favour of the Crown, not to affect purchasers or

mortgagees, unless registered with the Master of the Common Pleas.

9. Quietus to debtors, or accountants to the Crown, to be registered.

10. The Commissioners of the Treasury may, upon payment into her Majesty's Exchequer of such sum, or upon such other terms as they may think proper, certify under their hands that any lands of a crown debtor or accountant shall be held by a purchaser, mortgagee, or lessee, (in case of leases for fines,) discharged from all further claims by the Crown.

11. Such certificate or discharge shall not affect the rights of the Crown in the residue of its debtor's estate.

12. Conveyances by bankrupts, *bona fide* made to any person before the date and issuing of the fiat, shall be valid, notwithstanding any prior act of bankruptcy, "if such person had not at the time of such conveyance notice of any prior act of bankruptcy."

13. No purchase from any bankrupt *bona fide*, and for valuable consideration, shall be impeached by reason of the purchaser having had notice at the time of such purchase of an act of bankruptcy, unless a commission [*now a fiat*] be sued out within twelve calendar months after such bankruptcy.

14. Act shall not extend to Ireland.

### *Limitation of Actions and Suits.*

3d and 4th WILLIAM IV., cap. 27.—[Royal Assent,  
July 24, 1833.]

An Act for the Limitation of Actions and Suits relating to Real Property, and for Simplifying the Remedies for trying the Rights thereto.

Sec. 1. Definitions of words used in the act, viz. "*land*," manors, messuages, and all other corporeal hereditaments and tithes, (other than tithes belonging to a spiritual or eleemosynary corporation sole,) and to any share, estate, or interest in them, whether

freehold, chattel interest, or copyhold "*rent*," all heriots, services, and suits, for which a distress may be made, and annuities and periodical sums of money charged upon, or payable out of any land, (except moduses or compositions belonging to a spiritual or eleemosynary corporation sole,) "*the person through whom another person is said to claim*," shall mean any person by, through, under, or by the act of whom the person so claiming became entitled as heir, issue in tail, tenant by the courtesy, tenant in dower, successor, special or general occupant, executor, administrator, legatee, husband, assignee, appointee, devisee, or otherwise; and also any person who was entitled to an estate or interest to which the person so claiming, or some person through whom he claims, became entitled as lord by escheat "*person*," body politic, corporate, collegiate, class of creditors, or other persons, as well as an individual.

Time of limitation.

2. No land or rent shall be recovered by any person,<sup>\*</sup> but within twenty years next after the right shall have first accrued to such person, or to any person through whom he claims.

3. The right to make an entry or distress, or bring an action, shall be deemed to have first accrued as follows:

Where the claimant, or the person through whom he claims, shall ever have been in possession of any land, or in receipt of the profits thereof, in respect of the estate or interest claimed, then the time of the last receipt<sup>a</sup> or last being in possession.

Where the estate or interest of some deceased per-

<sup>\*</sup> By 1st Victoria, cap. 28, mortgagees may bring their action to recover possession "within twenty years next after the last payment of any part of the principal," money or interest.

<sup>a</sup> Where the land has been held under lease in writing, upon which an annual rent of 20s. or upwards is reserved, the right shall be deemed to have accrued at the time of the first receipt by the person wrongfully receiving it, and not the last receipt by the claimant. See sect. 9.

son, who continued in possession till his death, is claimed, then such person's death.

Where the claim is in respect of an estate granted by any grant or conveyance (other than a will) made by a person in actual possession, then if no person shall have ever been in possession, under such grant, the time at which the claimant or person through whom he claims, became entitled to such possession or receipt under such instrument.

Where the estate claimed shall have been a remainder or estate in future, the time at which such estate became an interest in possession.

Where the claim is in respect of any forfeiture or breach of condition, the time of such forfeiture or breach.

4. Where advantage of forfeiture is not taken by reversioner or remainder-man, he shall have a new right when his estate comes into possession.

Reversioner  
or remainder-  
man.

5. Right of reversioner deemed to have accrued at the determination of the previous estates, though he may have been in possession previous to their creation.

6. An administrator to claim as if there had been no interval between the death and grant of administration.

7. Right of party entitled subject to tenancy at will, (other than that of a mortgagor or cestui on trust,) shall be deemed to have accrued at the determination of the tenancy, or at the end of one year from its commencement.

8. Right of party entitled subject to a tenancy from year to year, or other period, (not created by lease in writing,) shall be deemed to have accrued at the end of the first year, or other period, or last payment of rent.

9. Where rent amounting to 20s., reserved by a lease in writing, shall have been wrongfully received, no right to accrue on the determination of the lease, but at the time of the first wrongful receipt.

10. A mere entry not to be deemed possession.



11. No right to be preserved by continual claim.

12. Possession of one coparcener, joint-tenant, or tenant in common, not to be deemed the possession of the other.

13. Possession of a younger brother, or other relation, not to be deemed the possession of the heir.

14. Acknowledgment in writing signed by the person in possession given to the person entitled, or his agent, equivalent to possession or receipt of rent.

15. Possession not being adverse at passing of act, the right was not barred until five years afterwards.

Saving for disabilities.

16. Persons under disabilities of infancy, lunacy, coverture, or being beyond seas, and their representatives, to be allowed ten years from the termination of their disability or death.

17. But no action, &c., shall be brought but within forty years after the right of action accrued.

18. No further time to be allowed for a succession of disabilities.

19. Scotland, Ireland, and the adjacent islands, not to be deemed beyond seas.

Where a person has several estates in the same land.

20. Where the right of any person to an estate in possession is barred by lapse of time, the right of the same person to any other estate, which he became entitled to during that time, shall also be barred unless some estate subsequent to the estate in possession shall, in the meantime, have been recovered by some third person entitled thereto.

21. Where tenant in tail is barred, remainder-men, whom he might have barred, shall not recover.

22. Possession adverse to a tenant in tail shall run on against the remainder-man whom he might have barred.

Remainders on an estate tail.

23. Where there shall have been possession under an assurance by a tenant in tail which shall not bar the remainders, they shall be barred at the end of twenty years after the time when such assurance, if then executed, (by the person who, if such assurance

had not been made, would be entitled to such estate tail,) would, without the consent of another person, have barred them.

24. No suit in equity to be brought after the time when the plaintiff, if entitled at law, might have brought an action.

25. In cases of express trust, the right shall not be deemed to have accrued until a conveyance to a purchaser for value. Trust.

26. In case of a concealed fraud, the time shall run from the time at which such fraud shall, or with reasonable diligence might, have been first known. Fraud. This clause not to prejudice purchasers for valuable consideration without participation in, or notice of, such fraud.

27. Saving of any rule or jurisdiction of courts of equity in refusing relief on the grounds of acquiescence or otherwise.

28. Mortgagor's right of redemption barred at the end of 20 years from the time when the mortgagee took possession, or from the last signed acknowledgment of the title of the mortgagor, or his right to redeem, which shall have been given to him or other person claiming his estate, or their agent. An acknowledgment to one of several *mortgagors* shall be effectual for them all, but an acknowledgment by one of several *mortgagees* shall only affect that one, and the mortgagor shall be entitled to redeem a divided part of the land as against the party giving such acknowledgment on payment, with interest, (where the proportion is unascertained,) of such part of the mortgage-money as will bear the same proportion to the whole amount as the value of such divided part of the land shall bear to the value of the whole of the land mortgaged. Mortgagor.

29. Spiritual or eleemosynary corporation sole may recover within "the period during which two persons in succession shall have held the office or benefice, in respect whereof such land or rent shall be claimed, and six years after a third person shall Spiritual corporations sole.

be appointed thereto," and (in case such periods shall not amount to sixty years) for such further period as will make up sixty years.

Advowsons.

30. No advowsons to be recovered after three adverse incumbencies, or (if the times of such incumbencies shall not amount to sixty years) the period of sixty years.

31. Incumbencies after lapse, but not after promotions to bishoprics, to be reckoned as incumbencies within the act.

32. A person claiming an advowson by virtue of an estate, which the owner of an estate tail might have barred, shall be deemed to claim through such tenant in tail, and be barred accordingly.

33. No advowson to be recovered after 100 years from the time at which a clerk shall have obtained adverse possession of the benefice.

Barred rights extinguished.

34. At the end of the period of limitation, the right of the party out of possession to be extinguished.

35. Receipt of rent payable by any lessee to be deemed as against such lessee, or any person claiming under him receipt of profits.

36. Real and mixed actions abolished after 31st December 1834, except dower, quare impedit, and ejectment.

37. Provision for bringing real actions until the 1st June 1835, in certain cases.

38. Saving of the rights of persons entitled to real actions only at the commencement of the act.

39. No descent, cast, discontinuance, or warranty, to bar a right of entry.

Money charged on land and legacies.

40. "Money secured by any mortgage, judgment,<sup>†</sup> or lien, or otherwise, charged upon or payable out of any land or rent at law or equity," and legacies<sup>‡</sup>

<sup>†</sup> All judgments as against purchasers, mortgagees, or creditors, are void after the expiration of five years from the first entry, or any re-entry thereof, with the senior master of the Common Pleas.—2d Victoria, cap. 11, sec. 4.

<sup>‡</sup> The residue is a legacy within the meaning of this

shall not be recovered "but within twenty years after a present right to receive the same shall have accrued to some person capable of giving a discharge for, or release of the same," or the payment of some part of the principal money, or interest, or the giving to the person entitled thereto, or his agent, an acknowledgment of the right, "signed by the person by whom the same shall be payable, or his agent."

41. No arrears of dower shall be recovered for more than six years.

42. No arrears of rent, or interest on money, charged on land, to be recovered for more than six years.

43. Act to extend to spiritual courts.

44. Act not to extend to Scotland, nor to advowsons in Ireland.

*Recovery of Possession of Tenements.\**

1st and 2d VICTORIA, cap. 74.—[Royal Assent,  
August 10, 1838.]

An Act to facilitate the Recovery of Possession of Tenements after due Determination of the Tenancy.

Sec. 1. Where the term of a tenant at will, or for a term not exceeding seven years, liable to no rent, or to a rent not exceeding the rate of L.20 a-year, and upon which no fine shall have been reserved, shall have ended, or, being duly determined by a legal notice to quit, or otherwise, and such tenant, or any person by whom the premises shall be actually occupied, shall not quit; a notice in the form mentioned in the act,<sup>v</sup> signed by the landlord, or his agent, of his intention to proceed under the act, may be given to such tenant or occupier; and if such

clause, 2 Y. and Col. 200. A suit by cestuique trust of a legacy against the legatee in trust is not within the provisions of this clause.—Phillipo v. Munnings, 2 M. and Cr. 309.

<sup>v</sup> See post. Notices.

person shall not show to the justice reasonable cause why possession should not be given under the act, upon proof of the holding, and the determination of the tenancy, and the landlord's title, (where it has accrued since the letting,) and the service of the notice, and of the neglect or refusal to quit, the justices shall issue a warrant to the constables, commanding them within some period, not being less than twenty-one days, or more than eighty, to enter and deliver possession to the landlord. Act not to protect any person applying for such warrant from any action for such entry where he had no lawful right to the possession.

2. Such notice may be served personally, or by leaving the same with some person being in and apparently residing at the party's place of abode. Notice to be read over and explained; but where such person or his abode cannot be found, the notice must be posted up on the premises.

3. The obtaining of the warrant by any person not having a right to the possession, shall be deemed a trespass by him, although no entry be made; and, in case the tenant or occupier shall enter into a bond with two sureties to sue such person without delay, and to pay the costs thereof, in case of not obtaining a verdict, the execution of the warrant shall be delayed until judgment, which judgment, if for the plaintiff, shall supersede the warrant, and entitle him to double costs.

4. Such bond shall be made to the landlord, or his agent, at their costs, and approved and signed by the justices; and if the bond shall be forfeited, or the judge at the trial shall not indorse upon the record that the condition of the bond hath been fulfilled, the party to whom the bond was given may recover upon it, subject to any order for the relief of the parties that the court may make.

5. Exempts justices and constables from liability.

6. Where landlord has a lawful title, he shall not be deemed a trespasser by reason of irregularity, but be liable to an action on the case for special damages,

which, if proved, but assessed by the jury at a sum not exceeding 5s., the plaintiff shall recover no more costs than damages, unless the judge shall certify that full costs ought to be allowed.

7. Interpretation of words, viz. "*Landlord*" shall be understood as signifying the person entitled to the immediate reversion of the premises, or, if the property be held in joint tenancy, coparcenary, or tenancy in common, any one of the persons entitled to such reversion; and the word "*Agent*" shall be taken to signify any person usually employed by the landlord in the letting of the premises, or in the collection of the rents thereof, or specially authorized to act in the particular matter by writing under the hand of such landlord.

8. Act not to extend to Scotland or Ireland.

*Prescription.*

2d and 3d WILLIAM IV., cap. 71.—[Royal Assent,  
August 1, 1832.]

An Act for Shortening the Time of Prescription in certain Causes.

Sec. 1. No claim by custom, prescription, or grant, to any right of common, or other profit or benefit, (except tithes, rents, and services,) from or upon any land which shall have been enjoyed by any person claiming right thereto, without interruption for 30 years, shall be defeated by showing the first enjoyment of that right prior to that period; and when the same shall have been enjoyed for 60 years, the right thereto shall be deemed absolute, unless the same was enjoyed by some written consent or agreement.

2. Substitutes 20 years and 40 years for the above periods of 30 and 60, as to the claims "to any way or other easement, or to any watercourse," or the use of any water.

3. The right to lights shall be deemed absolute after an uninterrupted enjoyment of 20 years, unless enjoyed by consent in writing, any custom to the contrary notwithstanding.

4. The beforementioned periods to be deemed next before some suit, wherein the claim shall be brought into questions. And no act which is not acquiesced in for one year, after the party interrupted shall have notice thereof, and of the person making or authorizing the same, shall be deemed an interruption within the meaning of the act.

5. Contains directions as to pleading.

6. No presumption shall be made in favour of any claim upon proof of enjoyment of the right claimed for any less period than mentioned in the act as applicable to the case.

7. The time during which any person shall be under a disability, or during which any action which shall have been diligently prosecuted shall have been pending, shall (except as to cases where the claim is thereby declared absolute) be excluded in the computation of the periods then mentioned.

8. When any land or water shall be held for term of life, or any term of years exceeding three years, the time of enjoyment of any way, watercourse, or use of any water upon, over, or from it, during the continuance of such term, shall be excluded from the computation of the period of 40 years, mentioned in sec. 2, in case the claim shall be resisted within three years after the determination of such term by the person entitled to the reversion expectant thereon.

9. Act confined to England.

10. Act to commence Michaelmas term 1832.

*Tithes.*

2d and 3d WILLIAM IV., cap. 100.—[Royal Assent,  
August 9, 1832.]

\*An Act for Shortening the Time required in Claims of Modus Decimandi, or exemption from, or discharge from Tithes.

Sec. 1. Prescriptions, and claims of and for any modus, or of or to any exemption from tithes, shall, in cases where the render of the tithes in kind shall be demanded by the king, or any other person or body, (other than a corporation sole,) be deemed valid upon evidence showing the payment of tithes, money, or other matter in lieu thereof for the period of 30 years, unless in the case of a claim of a modus, "the actual payment or render of tithes in kind or of money, or other thing differing in amount, quantity, or quality, from the modus claimed;" or, in case of claim of exemption from tithes, "the render or payment of tithes, or of money, or other matter in lieu thereof, shall be shown to have taken place at some time prior to such 30 years," or it shall be proved that such payment or render of modus was made, or enjoyment had, by some consent or agreement, expressly made or given for that purpose by deed or writing. And if such proof in support of the claim be extended to the full period of 60 years, the claim shall be absolute, unless such payment or enjoyment was had by consent in writing. Such prescription or claim is made valid against corporations after the time that two persons in succession shall have held the benefice, and three years after the appointment of a third person thereto; or, if those periods should not amount to 60 years, then for that period, and three years after the appointment of such third person, unless such payment or enjoyment was by consent in writing.

\* By the 19th section of the Tithe Commutation Act, (6th and 7th William IV., cap. 71,) it is provided, that nothing therein contained shall revive any right to tithes, which then was, or thereafter might be, barred by any law then in force for that purpose.



2. Gives validity to every composition for tithes which had been confirmed by the decree of any court of equity in England, in a suit to which the ordinary and incumbent were parties. A modus or exemption which did not exist or was not acted upon within a year before the passing of the act excluded from its provisions.

3. The act not avoidable in any suit commenced before the end of one year after the session of 1832.

4. Act not applicable where any demise by deed or composition in writing, of or for tithes, was subsisting at the passing of the act, and a suit for the recovery of such tithes shall be instituted within three years from the determination of such demise or composition.

5. The time during which lands shall be held by persons entitled to the tithes thereof (whether as owner or lessee) is excluded in the computations under the act.

6. As also the time during which any person capable of resisting any claim shall be under any disability, or during which any suit shall be pending.

7. Directions as to allegations in pleadings.

8. No presumption to be allowed in support of any claim for any less period than mentioned in the act.

9. Act confined to England.

### *Wills.*

1st VICTORIA, cap. 26.—[Royal Assent, 3d July 1837.]

### An Act for the Amendment of the Laws with respect to Wills.

Sec. 1. Definition of words: "*Will*" shall extend to a testament and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by a will and testament, or devise of the custody and tuition of any child by virtue of the 12th Charles II. "*Real Estate*" shall extend to manors, advowsons, messuages, lands, tithes, rents, and hereditaments, whether freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and

whether corporeal, or incorporeal, or personal, and to any undivided share thereof, and to any estate, right, or interest (other than a chattel interest) therein; and the words "*Personal Estate*" shall extend to leasehold estates, and other chattels real, and also to moneys, shares of government and other funds, securities for money, (not being real estates,) debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein.

2. Repeals previous acts.

3. All real and personal estates which a party shall be entitled to at law or in equity at his death, including copyholds not surrendered to the use of his will, or to which he shall not have been admitted, notwithstanding any custom and estates pur autre vie, contingent executory, or other future interests in any real or personal estate and rights of entry, notwithstanding he may have become entitled to the same, subsequently to the execution of his will, may now be disposed of by will.

4. Relates to the fees and fines payable by devisees of customary freehold and copyhold estates.

5. Wills of customary freehold, and copyholds, or extracts thereof, shall be entered on the court rolls; the lord is to be entitled to the same fine from a devisee of real estate not devisable previous to this act, as he would have been from the heir in case of descent.

6. Estates pur autre vie of a freehold nature not disposed of by will, shall be chargeable in the hands of the heir, if they shall come to him by reason of special occupancy as assets by descent; but if there shall be no special occupant, they shall go to the executor or administrator; and if the same shall come to the executor or administrator, either by special occupancy, or by virtue of this act, they shall be assets in his hands applicable as the personal estate of the testator or intestate.

7. No will made by any person under the age of twenty-one years shall be valid.

8. No will by a married woman, except such as she might have made before the passing of this act, shall be valid.

Execution of.

9. No will shall be valid, unless it shall be in writing, and signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction, and such signature be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses attest and subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

Appoint-  
ments.

10. Appointments by will must be executed in manner thereinbefore required; and so executed, shall be a valid execution of a power of appointment by will, notwithstanding some other form of execution might have been required.

11. Soldiers' and mariners' wills excepted.

12. The act is not to affect certain provisions of 11 Geo. IV., and 1 Will. IV., cap. 20, with respect to wills of petty officers, seamen, and marines.

13. Publication of a will shall not be required.

14. If any person who shall attest the execution of a will, shall, at the time of the execution thereof, or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

Gifts to wit-  
nesses.

15. Gifts to attesting witnesses, their wives, or husbands, (except charges and directions for the payment of debts,) shall, so far only as concerns such person, or the wife or husband of such person, or any person claiming under such person, or wife, or husband, be void.

16. A creditor, or the wife or husband of any creditor, whose debt is by the will charged on any real or personal estate, may be a witness to prove the execution, or the validity or invalidity, of a will attested by him or her.

17. An executor of a will may be admitted a witness to prove the execution of such will, or the validity or invalidity thereof.

18. Every will shall be revoked by marriage, Revocation.  
(except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir, customary heir, executor, administrator, or the person entitled as his or her next of kin under the statute of distribution.)

19. No will shall be revoked by any presumption of an intention on the ground of alteration in circumstances.

20. No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil, or by some writing, declaring an intention to revoke the same, and executed as a will, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence, and by his direction, with the intention of revoking the same.

21. No obliteration, interlineation, or other alteration made in any will after the execution thereof shall have any effect, except so far as the words, or effect of the will before such alteration, shall not be apparent, unless such alteration shall be executed as is required for the execution of a will, but the will, with such alteration as part thereof, shall be deemed to be duly executed, if the signature of the testator and the subscription of the witnesses be made in the margin, or on some other part of the will opposite, or near to such alteration, or at the foot or end of, or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

22. No will or codicil, or any part thereof, which Revival.  
shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil showing an intention to revive the same; and when any will or codicil which shall be partly re-

voked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.

23. No conveyance or other act subsequently to the execution of a will, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to the interests which the testator shall have power to dispose of by will at the time of his death.

24. A will shall be construed to speak from the death of the testator, unless a contrary intention shall appear by the will.

Residuary  
devise.

25. A residuary devise shall include estates comprised in lapsed and void devises, unless a contrary intention shall appear from the will.

General de-  
vise.

26. A general devise of the testator's lands shall include copyhold and leasehold, as well as freehold lands, unless a contrary intention shall appear by the will.

27. A general devise or gift shall include estates over which the testator has a general power of appointment, if the description used extends to them, and shall operate as an execution of the power, unless a contrary intention shall appear by the will.

28. A devise without any words of limitation shall be construed to pass the fee, unless a contrary intention shall appear by the will.

29. "In any devise or bequest, the words 'die without issue,' or 'die without leaving issue,' or 'have no issue,' or any other words which may import either a want or failure of issue of any person in his lifetime, or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime, or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift, being with-

out any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise; provided, that this act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue."

30. A devise of any real estate, (other than a presentation to a church,) to any trustee or executor, shall be construed to pass the fee-simple, or other the whole interest which the testator had power to dispose of by will, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication. Devise to trustees.

31. Trustees under an unlimited devise where the trust may endure beyond the life of a person beneficially interested for life, to take the fee or other the whole legal estate, which the testator had power to dispose of by will, and not an estate determinable when the purposes of the trust shall be satisfied.

32. Devises of estates tail shall not lapse by the death of the devisee in tail, if he have issue living at the testator's death, unless a contrary intention shall appear by the will. Of estates tail.

33. Gifts to children, or other issue of the testator, who leave issue living at the testator's death, shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will. To testator's issue.

34. Act not to extend to wills made before 1838, nor to estates *pur autre vie* of persons who died before 1838, but every will re-executed or republished or revived by any codicil, shall for the purposes of this act be deemed to have been made at the time at which the same shall be so re-executed, republished, or revived.

## CHAPTER VII.

### ACKNOWLEDGMENT OF DEEDS BY MARRIED WOMEN.

[Under the 3d and 4th WILLIAM IV., cap. 7, sec. 84.]

*The memorandum to be indorsed or written at the foot or the margin of the deed.*

This deed marked — was this day produced before me, [or us,] and acknowledged by — therein named to be her act and deed, previous to which acknowledgment the said — was examined by me [or us] separately and apart from her husband, touching her knowledge of the contents of the said deed, and her consent thereto, and declared the same to be freely and voluntarily executed by her.

#### *Certificate of the Acknowledgment.*

(To be written on a separate piece of parchment.)

These are to certify, that, on the 2d day of March, in the year of our Lord 1837, ["before me, the undersigned Sir N. C. T., Lord Chief Justice of the Court of C. P.;" or "before me, Sir J. P., knt., one of the Justices of the Court of Q. B. at Westminster;" or "before me, the undersigned J. W. F., one of the Masters in ordinary of the High Court of Chancery;" [or] before us, A. B. and C. D., two of the\* perpetual commissioners appointed for the† for taking the

\* Or commissioners specially appointed pursuant to an act, &c., for taking the acknowledgment of any deed by A. the wife of B.

† Here insert the particular county or place for which the commissioners are at the time acting.

acknowledgments of deeds of married women, pursuant to an act passed in the 3d and 4th years of the reign of King William IV., entitled "An act for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance," appeared personally M., the wife of C. D., of, &c., Esq., and produced a certain indenture marked A., bearing date the, &c., and made between, &c., [*insert, the names and descriptions of the parties ;*] and also a certain indenture marked B., bearing date, &c., and made between, &c., [*names and descriptions,*] and acknowledged the same respectively to be her act and deed. And I (or "we") do hereby certify, that the said M. D. was, at the time of her acknowledging the said deeds, of full age and competent understanding, and that she was examined apart from the said C. D. touching her knowledge of the said deeds, and that she fully and voluntarily consented to the same.

*Affidavit verifying the Certificate of Acknowledgment.*

In the Common Pleas.

A. B., of C., in the county of S., gentleman, one of the attorneys [*or solicitors*] of the court of \_\_\_\_\_, maketh oath and saith, that he knows Mary, the wife of C. D., in the certificate *hereunto annexed* mentioned, and that the acknowledgment therein mentioned was made by the said M. D., and the certificate signed by [*the judge or master, or by A. B., of, &c., and C. D., of, &c., the commissioners in the said certificate mentioned,*] on the day and year therein mentioned, at C., in the county of S., in the presence of this deponent; and that at the time of making such acknowledgment, the said M. D. was of full age and competent understanding; and that the said M. D. knew the said acknowledgment was intended to pass her estate in the premises, respecting which such acknowledgment was made. [\*And this deponent further saith, that, to the best of this deponent's

\* This is to be omitted when the acknowledgment is taken before a judge or master.



knowledge and belief, neither of the said commissioners is [*or the said A. B. (or the said C. D.) one of the said commissioners, is not*] in any manner interested in the transaction, giving occasion for such acknowledgment, or concerned therein as attorney, solicitor, or agent, or as clerk to any attorney, solicitor, or agent, so interested or concerned.] And this deponent further saith, that, previous to the said M. D. making the said acknowledgment, he this deponent inquired of the said M. D. (*or, if more than one, each of them the said, &c., the married women,*) whether she intended to give up her interest in the estates, in respect of which such acknowledgment was taken, without having any provision made for her in lieu of, or in return for, or in consequence of her so giving up her interest in such estates; and that in answer to such inquiry, the said M. D. (*or each of them, the married women*) declared that she did intend to give up her interest in the said estates without having any provision made for her in lieu of, or in return for, or in consequence of her so giving up such her interest; of which declaration of the said M. D. (*or each of them the said, &c.*) this deponent has no reason to doubt the truth, and verily believes the same to be true; [*or declared that a provision was to be made for her in consequence of her giving up such her interest in the said estates.* And this deponent lastly saith, that, before her acknowledgment was so taken, he was satisfied, and does now verily believe, that such provision has been made by deed or writing, or that the terms thereof have been reduced into writing, and that such deed or writing has been produced to the said [*judge, master, or commissioners.*] And, lastly, this deponent saith, that it appears, by the deed acknowledged by the said (*the married woman,*) that the premises wherein she is stated to be interested are described to be in the parish or place of [*or parishes or places of* ] and in the county of [*or counties of, as the case may be.*]

This affidavit is to be made by some practising

attorney or solicitor, and to be sworn before a judge of the Court of *Common Pleas*, or a commissioner appointed for taking affidavits in that court. (*Rules, Hil. Term, 1834.*)

When the solicitor cannot speak to all the facts, one or two persons may concur with him in making the affidavit, and, in such case, the form given above will require a few alterations. The affidavit should be on parchment, and must have a stamp of 2s. 6d.\*

Under the rules of court of Hilary term 1834, the following fees are payable :

To the two perpetual commissioners for taking the acknowledgment of every married woman when not required to go further than a mile from their residence, being 13s. 4d. for each commissioner, L.1, 6s. 8d.

To each commissioner when required to go more than one mile, but not exceeding three miles, besides his reasonable travelling expenses, L.1, 1s.

To each commissioner where the distance required shall exceed three miles, besides his reasonable travelling expenses, L.2, 2s.

\* For other forms, see Hayes on Conveyancing, and Gray's Country Solicitor's Practice.

## CHAPTER VIII

### AGREEMENTS.

#### AN AGREEMENT FOR AN EXCHANGE.

Parties.	Articles of agreement made and entered into this day of, &c., between A. B., of, &c., for himself, his heirs, executors, and administrators, of the one part, and C. D., of, &c., for himself, his heirs, executors, and administrators, of the other part.
Recitals.	Whereas the said A. B. is seised to him and his heirs of a certain messuage and lands, situated at, &c., and called or known by the name of, &c., and containing by estimation, &c., (more or less,) and now in the tenure or occupation of, &c.; and the said C. D. is also in like manner seised of a certain
Agreement to exchange.	messuage and lands, situated at, &c.; and whereas the said A. B. and C. D. have agreed to exchange with each other their said respective messuages and hereditaments, (subject to the approbation of their respective counsel as to the title thereof,) and the hereditaments of the said A. B. being considered to be of greater value than the hereditaments of the said C. D., by the sum of L. , the said C. D. hath agreed to give to the said A. B. the said sum of L.
Abstracts to be furnished in a certain time.	for equality of exchange. Now it is hereby declared and agreed, that each of them, the said A. B. and C. D., and his heirs, shall and will cause to be made

and delivered at his and their own expense, unto the other of them, his heirs or assigns, or his or their solicitor, within one calendar month from the date hereof, a full and satisfactory abstract of his title to his said premises so agreed to be exchanged as aforesaid; and also shall and will, on or before the, &c., now next ensuing, upon having a sufficient conveyance or assurance of the lands and hereditaments of the other of them, made to him, his heirs and assigns, (the said A. B. receiving from the said C. D., his executors, administrators, or assigns, the said sum of L.     ,) execute, at the expense of the other of them, (except as to any outstanding terms,) proper conveyances and assurances of the inheritance in fee-simple in possession of their respective hereditaments, together with the title-deeds thereof, unto and to the use, or for the other of them, his heirs and assigns, or as he or they shall direct, free from all incumbrances. And in the said assurances all usual and proper covenants shall be contained by and to the said parties respectively; and all persons possessing any legal or equitable estate or interest in the said premises, or beneficially entitled to the said sum of L.     , shall concur, if required, according to their respective interests. And it is hereby agreed, that the said parties shall respectively be entitled to the rents and profits of the said premises, so to be to them respectively assured, from the     day of     now last past, up to which time, all rents, taxes, rates, assessments, and charges payable in respect of the said premises, shall be paid and discharged by the party conveying the same. And the said C. D. doth hereby covenant, promise, and agree with and to the said A. B., his heirs, executors, and administrators, that upon the execution of such conveyances and assurances, and delivery of such possession and title-deeds, by the said A. B. as aforesaid, he, the said C. D., his executors or administrators, shall and will pay unto the said A. B., his executors, administrators, and assigns, the said sum

Mutual conveyances to be executed.

Conveyances to contain all proper covenants, &c.

Each party to be entitled to the rents, &c., from the last quarter-day.

The sum of L.     to be paid for equality of exchange.

Errors in description, &c., not to vacate the contract.

If title of either party prove defective, these presents to be void.

Intervening accidents not to affect the contract.

of L. , in lawful current money of England, as or for such equality of value as aforesaid.<sup>7</sup> Provided always, that these presents shall not be void by reason of any trifling error or omission which may have been made in the description hereinbefore given of the hereditaments of either of the said parties, so that the same be of the same nature and quantity of interest, and be situated within the county hereinbefore mentioned, or as to any quit-rent or other small out-going, to which the same may be subject; but in such case a reasonable abatement or equivalent shall be made or given, as the case may require, by or to the said parties respectively, or their respective heirs, executors, or administrators. And it is further agreed, that in case the title of either of the said parties to the hereditaments hereby agreed to be conveyed in exchange shall prove defective, (except as last aforesaid,) these presents shall be void, and all reasonable costs, charges, and expenses paid or sustained by the said parties, or either of them, or his or their respective heirs, executors, administrators, or assigns, or his or their respective solicitors in the investigation thereof, shall be wholly borne and paid by the said party whose title shall so prove defective, his executors or administrators. And it is further agreed, that any loss or damage which may happen to the hereditaments of either of the said parties, by fire, storm, or tempest, or any increase which may take place in the value thereof, at any time between the date hereof and the completion of the said exchange, shall not affect the present contract, nor entitle either of the said parties to any abatement or equivalent in respect thereof. Provided, nevertheless, that the benefit of any policy or policies of insurance, which shall be then subsisting

<sup>7</sup> Here may be added, "And it is hereby mutually agreed between the said parties, that it shall be expressly declared in the said conveyances, that neither of them, the said A. B. and C. D., shall re-enter on the lands conveyed in exchange, in consequence of any defect of title." (See 8 Ves. jun. 256.)

against any such loss or damage, shall in that case belong to the parties taking the premises upon or in respect of which any such policy shall subsist, his heirs, executors, administrators, or assigns. And it is also agreed, that neither of the said parties, or his heirs, shall, from henceforth, during the subsistence of the present contract, grant or contract for any lease or leases of the said premises, or any part of the hereditaments hereby agreed to be conveyed by him in exchange, without the consent, in writing, of the other of them, his heirs or assigns. And it is hereby lastly agreed, that all matters relating to the said exchange hereby agreed to be made, not herein particularly provided for, shall be regulated by the rules of law and equity, or the practices amongst conveyancers in relation thereto; and, in case of difference of opinion in respect thereof, then by reference to arbitration, in the usual manner of submission for that purpose.

Neither party  
to grant  
leases.

Matters not  
hereby pro-  
vided for to  
be regulated  
by the prac-  
tice in simi-  
lar cases, or  
by reference  
to arbitration.

In witness, &c.

#### AGREEMENT FOR THE PURCHASE OF A FREEHOLD ESTATE.

An agreement made, &c.

The said [*vendor*,] in consideration of the sum of L. , paid to him by the said [*purchaser*] at or before the execution of this agreement, and of the further sum of L. , to be paid at the time hereinafter mentioned, doth agree to sell, and the said [*purchaser*] doth agree to purchase, all [*here describe the premises intended to be purchased*]. And the said [*vendor*] doth hereby agree that he will forthwith, at his own expense, make out and deliver unto the said [*purchaser*,] or his solicitor, on or before the, &c., an abstract of his title to the said [*premises*,] and will, at his own expense, deduce a clear title thereto. And also, that he, the said [*vendor*,] or his heirs, and all other necessary parties, shall

Considera-  
tion.

Premises.

Abstract.

Vendor to  
execute con-  
veyance.

Purchaser  
to pay re-  
mainder of  
purchase-  
money.

Expenses of  
agreement  
equally.

and will, on or before the, &c., next, on receiving from the said [*purchaser*,] his heirs, executors, administrators, or assigns, the said sum of L. , as hereinafter is mentioned, at the costs, charges, and expenses of the said [*purchaser*,] his heirs, executors, administrators, or assigns, by such conveyances and assurances in the law as the said [*purchaser*,] his heirs and assigns, or his or their counsel in the law, shall advise and require, well and sufficiently grant, release, convey, or otherwise assure, all and singular the said [*premises*,] with the appurtenances, and the fee-simple and inheritance thereof, unto and to the use of the said [*purchaser*,] his heirs, [*appointees*,] and assigns, or to whom he or they shall direct or appoint, *free from all incumbrances*, EXCEPT a chief rent of, &c., payable in respect to the said premises to, &c., (if any such be due.) In consideration whereof, the said [*purchaser*] doth hereby agree with the said [*vendor*,] that he, the said [*purchaser*,] his heirs, executors, administrators, or assigns, will, on or before the, &c., on a good title to the said [*parcels*] being shown to him, and on the execution of such conveyances and assurances as aforesaid, pay, or cause to be paid, unto the said [*vendor*,] his executors, administrators, or assigns, the said sum of L. , which, with the sum of L. paid to the said [*vendor*] as aforesaid, is the full consideration-money agreed to be given for the absolute purchase of the fee-simple and inheritance of the said premises.\*

And it is hereby also agreed, that the expenses of this agreement shall be borne by the parties hereto equally, and that the expense of all such conveyances and assurances as aforesaid, and all attested copies of deeds which shall be required by the said [*purchaser*,] shall be defrayed by him; but the expense of the assigning of any term or terms of years,

\* If timber be taken to at a valuation, add: "and shall and will also pay for all the timber growing on, &c., at the amount to be valued by two indifferent persons, (one to be chosen by each party,) or their umpire."

not already assigned to attend the inheritance, and all deeds, matters, or things for disincumbering the title, shall be had, borne, and performed by the said [*vendor* :] and that the said [*purchaser*] shall be entitled to the possession of the said hereditaments from the said            day of, &c. : And if the conveyance shall not be executed by the necessary parties, and the said purchase-money paid on or before the said, &c., the said [*purchaser*] shall pay interest for the purchase-money remaining unpaid unto the said [*vendor*] after the rate of            per cent. per annum : And, lastly, it is hereby agreed, that if the said [*vendor*] shall not be able to make out a good title to the said hereditaments, this agreement shall be void, and the deposit-money returned to the said [*vendor*,] with interest for the same, after the rate aforesaid. In witness whereof, the said parties to these presents have hereunto set their hands and seals\* the day and year first above written.

Interest in  
case of delay.

If not a good  
title, to be  
void.

#### AGREEMENT FOR THE PURCHASE OF A COPYHOLD.

Agreement made, &c., between, &c.

The said [*vendor*,] in consideration of, &c., doth agree to sell, and the said [*purchaser*] doth agree to purchase, all that customary or copyhold messuage, &c., [*describe the premises, and state the time for delivering the abstract and deducing a title, as in the preceding precedents ;*] and that the [*vendor*,] on receiving the purchase-money, will make and execute proper surrenders, conveyances, covenants, and as-

Considera-  
tion.

Parcels.

Abstract.

Surrenders.

\* If an agreement be under seal, it will require a deed-stamp of L.1, 15s. (Robinson v. Drybrough, 6 T. R. 317; Clayton v. Burlinshaw, 5 B. and C. 41.) If it be under hand only, it is called parol, and does not bind the heir; but if it be under seal, the heir is bound, if named. (Barber v. Fox, 2 Saund. 136; Platt on Covenants, 448.) An action upon a contract under hand only must be brought within six years. (1 Saund. Rep. 37.)



Free from  
charges;  
except, &c.

Purchaser  
agrees to pay  
purchase-mo-  
ney.

surances of the inheritance in fee-simple, (and according to the custom of the said manor,) of the said hereditaments unto and to the use of the said [*purchaser*,] his heirs and assigns, free from all charges and incumbrances, (*except only the rents, suits, and services respectively due and payable to the lord or lady for the time being of the said manor.*) In consideration whereof, the said [*purchaser*] doth agree with the said [*vendor*,] that he, the said [*purchaser*,] his heirs, executors, administrators, or assigns, will, on or before, &c., on the making and perfecting of such surrenders and assurances of the said and premises, pay, or cause to be paid, unto the said [*vendor*,] his executors, administrators, or assigns, the said sum of, &c., and shall and will pay the expenses of the said<sup>b</sup> surrender, and all fees and fines in respect of the same, and of the admission of him the said [*purchaser*,] (*add any clause required, for which see the preceding precedents.*)

In witness, &c.

#### AGREEMENT FOR THE SALE OF LEASEHOLD PREMISES.

Considera-  
tion.

Memorandum of an agreement made, &c.<sup>c</sup>

The said A. B., in consideration of L. , to him in hand now paid by the said C. D., the receipt, &c., and of the further sum of L. to be paid by the said C. D., as hereinafter is mentioned, doth hereby agree to sell and assign unto the said C. D., his executors, administrators, and assigns, all that,

<sup>b</sup> The surrender of the vendor, and admittance of the purchaser, as well as the fine to the lord of the manor, falls upon the purchaser, unless the agreement provides otherwise. (1 Atk. 96.)

<sup>c</sup> Although the personal representatives be not named in a contract for the sale of leasehold interests, it will be binding on them, as in the case of other contracts affecting personal estate; *Smith v. Watson*, Bunb. 55; *Platt on Covenants*, 454.

&c., for the residue and remainder of a certain term Premises.  
of, &c., now to come and unexpired, granted to the  
said A. B. (or *created*) by an indenture, dated on or  
about, &c., and made between, &c., (*and which has  
become, and is now vested in the said A. B.,*) sub-  
ject to the rents, payments, covenants, and conditions  
therein contained on the lessee's or assignee's part  
to be paid, kept, done, and performed; and that he, Abstract.  
the said A. B., will, on or before the, &c., make out  
and deliver unto the said C. D. an abstract of his  
title to the said term, but shall not be bound to in-  
clude in such abstract, or produce or show the lessor's  
title to the said premises;<sup>4</sup> and also that he, the said  
A. B., his executors and administrators, shall and  
will, on or before the, &c., next, on receiving the  
remainder of the said purchase-money from the said  
C. D., execute a proper assignment or other assur-  
ance of the said messuage, &c., with the appur-  
tenances, for the then residue of the said term so  
granted by the said indenture of lease, unto the said  
C. D., his executors, administrators, and assigns,  
subject as aforesaid. And the said C. D. hereby  
agrees with the said A. B., that he, the said C. D.,  
his executors, administrators, and assigns, shall and  
will pay unto the said A. B., his executors and  
administrators, on the execution of such assignment,  
the said sum of L. , the remainder of the  
said purchase-money, making together, with the said  
sum of L. , the full consideration agreed to  
be given for the purchase of the residue of the said  
term. And it is further agreed between the said  
parties, that all rates, taxes, and outgoings, payable  
for or in respect of the said premises to the said 25th  
day of March, shall be paid and discharged by the  
said A. B., and that the said C. D. shall be entitled  
to take the rents and profits of the said premises  
from the same time; and if the said assignment shall

<sup>4</sup> Where no stipulation is contained as to the title, the  
vendor must produce the lessor's title. *Post.* 204.

not be executed and perfected on or before, &c., the said C. D. shall pay interest on the purchase-money remaining unpaid, at the rate, &c.

In witness, &c.

**AGREEMENT FOR PURCHASE OF A LEASEHOLD ESTATE,  
WITH IMMEDIATE POSSESSION, AND WITH A STIPU-  
LATION AS TO THE FIXTURES.**

Parties.

Articles of agreement indented and made the, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part.

Recital.

Whereas the said C. D. hath agreed with the said A. B. for the purchase of the messuage or tenement, with the stables, yards, and appurtenances to the same belonging, hereinafter more particularly mentioned and described, for the remainder of a term of ninety-nine years, granted by, &c., in and by an indenture, bearing date the, &c., subject to the yearly rent of, &c., reserved and made payable to the said, &c., his heirs and assigns, at or for the price or sum of L. . .

A. B. cove-  
nants to as-  
sign.

Now these presents witness, that for and in consideration of, &c., he, the said A. B., for himself, his executors, and administrators, doth hereby covenant, promise, and agree to and with the said C. D., his executors, administrators, and assigns, that he, the said A. B., and all and every other person or persons having or lawfully claiming any right, title, or interest of, in, to, or out of the messuages and premises hereinafter mentioned and described, by, from, or under him, shall and will, on or before the, &c., by such good and effectual assignments and assurances in the law, as the counsel of the said C. D., his

\* If leasehold for lives, the agreement to convey will be for and during the natural lives of, &c., and the longest liver of them, with a stipulation that, on failure of any of the lives before the completion of the purchase, the lease shall be renewed at the expense of the vendor; but that the life shall be named by the purchaser.

executors, administrators, or assigns, shall advise and think proper, assign, transfer, and assure, or cause to be assigned, transferred, and assured, at the costs and charges of the said C. D., his executors, administrators, and assigns, all, &c. To hold the said mesuages and premises unto the said C. D., his executors, administrators, and assigns, for and during all the rest, residue, and remainder of the said term of ninety-nine years, and subject to the several covenants, conditions, and agreements, which, on the part and behalf of the said A. B., is or are therein contained, and, &c.<sup>1</sup> And the said A. B. doth hereby covenant and agree with the said C. D., that immediate possession of the said house and premises shall be delivered up to the said C. D., he, the said A. B., his workmen, servants, and agents, having full and free liberty to come into and upon the said premises, to take and carry away all the goods, furniture, glasses, books, book-cases, shelves, and effects whatsoever, of the said A. B., other than such part thereof as shall be agreed upon by and between the said A. B. and the said C. D. to be left to the use of the said C. D., his executors or administrators; he, the said C. D., for himself, his executors, or administrators, hereby covenanting and agreeing to pay unto the said A. B., his executors or administrators, such price or sum of money as the same goods shall be appraised or valued at, by two indifferent persons, the one to be chosen by and on the part of the said A. B., and the other on the part of the said C. D., his executors or administrators.<sup>2</sup>

To hold.

The possession to be given immediately to C. D., reserving a power to A. B., &c., to enter and remove the furniture, &c.

In witness, &c.

<sup>1</sup> Add the usual stipulation to pay purchase-money.

<sup>2</sup> If also for the sale of furniture, stock, &c., thus: "And the said A. B. hereby agrees to bargain and sell all, &c., the whole to be paid for at a valuation to be made by two indifferent persons, one to be chosen by each party, or the umpire of such referees, at which valuation the said C. D. hereby agrees to purchase the same."

## VARIATIONS ADAPTED TO PURCHASE AGREEMENTS.

If the contract be entered into by the attorney or agent of the vendor or purchaser, the principal ought to be named as the party thereto, and it ought to be executed in his name.<sup>b</sup>

If the contract be entered into by vendor, for himself and wife, say, "Between the vendor, and M., his wife, their heirs, executors, and administrators."

If the consideration be an annuity, say, "In consideration of an annuity or clear yearly sum of, &c., payable to the said vendor during his life, by half-yearly payments, on, &c., and to be charged and chargeable on the premises hereby contracted to be sold, and further secured by the bond of the said [vendor,] with a warrant of attorney for entering up judgment thereon." And the stipulation to execute the conveyance will be on having the said annuity

<sup>b</sup> *White v. Cuyler*, 6 T. R. 176; *Fontin v. Small*, 2 Raym. 1418; *Wilks v. Back*, 2 East, 142.

If the agent be a party to an agreement, and stipulates for the performance thereof by his principal, he will be personally responsible for the performance of the contract by his principal. (*Appleton v. Bincks*, 5 East, 148, 9 Ves. 234.)

A person may show by parol evidence, whether he acted as principal or agent; *Wilson v. Hart*, 7 Taunt. 295. The agent need not be authorized by writing; *Coles v. Trecothick*, 9 Ves. 250; *Norslock v. Buller*, 10 Ves. 311; *Deverell v. Lord Bolton*, 18 Ves. 509.

The Testamonium part of the agreement, if entered into by an agent, will be thus: "In witness whereof, the said A. B. hath hereunto, by the said [agent,] as his said attorney or agent, set his hand and seal, the day and year aforesaid." And the execution thus: "A. B. (seal) by C. D., his attorney or agent." *White v. Cuyler*, 6 T. R. 176.

secured as aforesaid. The stipulation on the part of the purchaser on the execution of the conveyance, will be to "well and effectually grant the said annuity, or clear yearly sum of, &c., unto the said [*purchaser*,] and to secure the same upon the premises, in manner as hereinbefore mentioned."

If the consideration be of stock, say, "In consideration of the capital sum of L. , three per cent. consolidated bank annuities, to be transferred into the name, and for the use of the said [*vendor*,] in the books of the governor and company of the Bank of England;" and the agreement to execute the conveyance will be, "upon the said sum of L. , &c., being transferred," &c., and the purchaser, on his part, will agree "to transfer," &c.

<sup>1</sup> If the consideration is to be ascertained by valuers, say, "At such price or sum of money, to be paid on, &c., next, as shall be ascertained and adjudged to be the value thereof, upon a survey and estimate to be made thereof, by A. B., of, &c., and C. D., of, &c., land-surveyors, or their umpire, to be chosen as hereinafter mentioned, and as in and by their or his award or umpirage in writing, shall be adjudged the worth and value of the premises hereinafter described, and to be paid by him the said [*purchaser*] to the said [*vendor*,] at the time aforesaid, so as the award of the said A. B. and C. D. be made in writing, ready to be delivered to the parties requiring the same, on or before, &c., or in case of their disagreement, so as the umpirage of the umpire, so to be chosen by the said valuers, be made in writing, ready to be delivered to the said parties requiring the same, on or before, &c., and under the terms, stipulations, and agreements hereinafter contained." A stipulation should be added at the end of the agreement for making the submission a rule of court, at the instance of either of the parties.

Where the price is to be determined by valuation.

<sup>1</sup> If the referees determine the price, the contract will be enforced, but not otherwise; *Milnes v. Gery*, 14 Ves. 400.

Delivery of  
abstract.

If it be the wish of the purchaser to make the time of delivering the abstract, and deducing a good title, the essence of the contract, a stipulation may be added as follows : " And if the said [*vendor*] shall not deliver an abstract of his title to the said premises to the said [*purchaser*,] or his solicitor, before, &c. ; or if, in the opinion of counsel of the said [*purchaser*,] the said [*vendor*] shall not deduce a good title to the whole of the said premises, then, and in either of the said cases, this present contract shall, at the option of the said [*purchaser*,] be to all intents and purposes void, and all reasonable expenses, incurred in investigating the title, shall be borne by the said [*vendor*,] his heirs, executors, or administrators."

#### OBSERVATIONS ON AGREEMENTS FOR PURCHASE.

It is considered that a few observations on this head may be useful, and they will be made applicable alike to sales by auction and by private contract.

What agree-  
ments for sale  
should con-  
tain.

Agreements for sale should, in all cases, contain—

The names of the vendor and purchaser—Such a description of the premises as will sufficiently identify them, and prevent any mistake as to what is really intended to be the subject of the contract—The consideration-money, the time when it is to be paid, and a provision as to interest, in case of its non-payment at that time—Any stipulations which the nature of the title may render necessary, as, for example, with reference to the time for which the title is to be shown, or the place where the deeds are to be inspected—A statement of what deeds cannot be given up—The party who is to bear the expense of searching for judgments, getting in outstanding terms and legal estates, or discharging the premises from incumbrances—A statement of any defect in the title which is incurable, or which the vendor wishes to avoid the expense of remedying—The times within which the sale is to be completed, and the preliminary steps

As to deeds.

Defects in  
title.

taken—A statement of all incumbrances, which cannot or are not intended to be discharged, as leases, land-tax, chief-rent, ground-rent, annuities, rights of way, covenants affecting the premises or the title-deeds, local taxes peculiar to the place, as for keeping up banks or drains—A stipulation where so intended that the purchasers are not to have their ordinary covenants—A statement of the party at whose expense any thing relating to the title, or the conveyance, is to be done; and, in fine—A stipulation as to every point where it is intended to depart from the course, which, in the absence of agreement, the law imposes upon the parties to a sale. To aid the practitioner in ascertaining which, an attempt will be made to state shortly what, in the absence of express stipulations, is the duty of a vendor or purchaser from the inception to the completion of the contract.

Incumbrances.

Covenants.

I will not here enter again into the question before discussed,<sup>i</sup> as to the period for which a vendor ought to show a title.

A vendor must, at his own expense,<sup>k</sup> make out his title, and for such purpose must furnish an abstract of the title during the limited period for which he must prove such title; and though earlier deeds may be referred to in those abstracted, he is not on that account bound to abstract them.<sup>l</sup> Whether he is bound to produce those deeds in his possession, which relate to the title at a period for which he is relieved from verifying it, does not appear to be quite settled; but as production is enforced in all suits for specific performance, (the vendor being compelled, on leaving the deeds in the master's office, to swear that they are all the deeds in his possession,) it is conceived that the duty must be the same in cases of sales completed without the medium of a suit, and,

Duties of vendor or purchaser on a sale.

<sup>i</sup> See ante, p. 14.

<sup>j</sup> See ante, p. 118.

<sup>k</sup> *Clowes v. Higginson*, 1 V. and B. 529.

<sup>l</sup> *Prosser v. Watts, Madd. and Gald.* 69.



indeed, no good reason can be alleged for a contrary practice, for the deeds can be of no use to the vendor, and if the concealment of a defect in the title which they would disclose is his object in retaining them, he would be disappointed, for that would be a sufficient ground for setting aside the sale, and compelling restitution of the purchase-money.<sup>m</sup> The expense of producing the deeds to be compared with the abstract must be borne by the vendor, and where the deeds are at a distance, the purchaser must send to the place where they are, but the expense of doing so will fall upon the vendor. *Sugd. V. and P.* 1, 449, 5th edition. *Hughes v. Wynne*, 8 Sim. 85.

Production of  
deeds.

A purchaser is not bound to rely upon facts stated in recitals, but is entitled to proof of all the facts stated in his abstract, forming a link in the title, except the execution of deeds, &c., thirty years old.<sup>n</sup>

The vendor is not bound to produce original wills or other instruments on record, but he must supply the purchaser with official copies.<sup>o</sup>

Lessor's title.

A person contracting for the sale of a leasehold interest, or for the grant of a lease, cannot, in the absence of any agreement to the contrary, enforce a specific performance of such contract without showing that the person granting the lease had full power to do so;<sup>p</sup> in other words, without showing the lessor's title.<sup>q</sup> To this rule, however, there exists

<sup>m</sup> *Edwards v. M'Leay*, Coop. 308; 2 Swans. 287; *Maddeford v. Austwick*, 1 Sim. 89; 2 M. and K. 279; *Dalby v. Pullen*, 3 Sim. 29.

<sup>n</sup> *Fort v. Clarke*, 1 Russ. 601.

<sup>o</sup> *Campbell v. Campbell*, *Sugd. V. and P.* 7, and 7 Jarm. Byth. 378.

<sup>p</sup> *Fildes v. Hooker*, 2 Merriv. 424; *Ogilvie v. Foljambe*, 3 Merriv. 53; *Deverell v. Lord Bolton*, 18 Ves. 505; *Purvis v. Rayer*, 9 Price, 488; *White v. Foljambe*, 11 Ves. 337.

<sup>q</sup> As to whether this rule would be applied in sales of leases 60 years old, see 7 Jarm. Byth. 370.

one exception in favour of lessees under a bishop, who are freed from the obligation of proving their lessor's title ;<sup>r</sup> but if the purchaser refuses to complete his contract, on the ground of the non-production of the lessor's title, he cannot at law recover any deposit he may have paid.<sup>s</sup>

A vendor must make out such title as can be enforced at law ; a purchaser cannot, therefore, ordinarily be compelled to take an equitable estate ;<sup>t</sup> and though it is elsewhere noticed, it may be here observed, that a purchaser cannot be compelled to accept a conveyance executed, or (in the case of copyholds) a surrender made by attorney,<sup>u</sup> and it is not advisable that he should, as the power of attorney is thereby made part of his title.

The vendor must, at his own expense, free the premises from all incumbrances, and get in all outstanding estates. The vendor must not allow any terms to be merged without the purchaser's consent, and must bear the expense of the assignment of terms not previously assigned to attend the inheritance. The purchaser must pay the costs of the preparation of the conveyance,<sup>v</sup> and of the assignment of any terms previously assigned to attend the inheritance, their execution being obtained by the vendor at his own expense.<sup>w</sup> In the sale of copyholds, the expense of the surrender and admission, and the fine to the lord, falls upon the purchaser.<sup>x</sup>

Removal of  
incumbrances.

Conveyance.

<sup>r</sup> *Fane v. Spencer*, 2 Mad. 438.

<sup>s</sup> *George v. Pritchard*, 1 Ryan and Moody, 417.

<sup>t</sup> *Abel v. Heathcote*, 2 Ves. 98.

<sup>u</sup> *Mitchell v. Neale*, 2 Ves. 679 ; *Noel v. Weston*, 6 Mad. 50 ; *Rickards v. Barton*, 1 Esp. 268.

<sup>v</sup> *Duke of Bolton v. Williams*, 2 Ves. 155 ; 4 Bro. C. C. 297 ; 1 Atk. 96 ; but in the recent case of *Reaves v. Gill*, 1 Beav. 375, a vendor who had contracted to grant a lease was directed to pay the additional costs of the lease occasioned by another person whose concurrence was essential being made a party.

<sup>w</sup> Sugd. V. and P. 5th Ed. 1, 450.

<sup>x</sup> 2 T. R. 184.

Title-deeds.

A purchaser is entitled either to the title-deeds or a legal covenant for their production;<sup>7</sup> and even if he should complete his purchase without obtaining such a covenant, he can, under his covenant for further assurance, compel the vendor to give him a covenant for the production of such of the deeds as he retained.<sup>8</sup> In the former case the deed of covenant would be at the vendor's expense,<sup>9</sup> and, in the latter, according to the ordinary terms of the covenant for further assurance, at the purchaser's expense. The purchaser may insist upon having, at the vendor's expense, attested copies of such deeds as are not delivered to him;<sup>10</sup> but it seems that his title to them depends upon the fact, whether or not he had notice at the time of the sale that he was not to have the possession of the deeds.<sup>11</sup>

Expense of investigating title, where contract not enforced.

Where the purchaser becomes bankrupt.

Where the vendor is unable to enforce the contract by reason of a defect in the title, he is liable to the purchaser for all the reasonable expenses which he may have incurred in investigating the title.<sup>12</sup>

The seventh sec. of the bankrupt act, 6th George IV., cap. 16, provides, that where the bankrupt shall have entered into any agreement for the purchase of any estate, or interest in land, the lord chancellor shall have power, upon petition, if the assignees shall not elect to abide by or abandon the agreement, to order them to deliver up the agreement and possession of the premises.

#### AGREEMENT FOR THE LEASE OF A HOUSE.

Agreement made, &c., between, &c.

The said A. B. agrees by indenture of lease, to be

<sup>7</sup> *Barclay v. Raine*, 1 Sim. and Stu. 449, 3 Ves. 225.

<sup>8</sup> *Fain v. Ayres*, 2 Sim. and Stu. 533.

<sup>9</sup> *Ex parte Stuart*, 2 Rose, 215.

<sup>10</sup> *Dare v. Tucker*, 6 Ves. 460; *Ex parte Stuart*, 2 Rose, 215; *Berry v. Young*, 2 Esp. Cases, 640.

<sup>11</sup> *Broughton v. Jewell*, 15 Ves. 176.

<sup>12</sup> *Attorney-General v. Corporation of Newark*, 8 Sim. 71; *Curtland v. Pounset*, 2 Taunt. 146.

executed on or before the, &c., to demise and let unto the said C. D., all, &c., to hold the same unto the said C. D., his executors and administrators, from, &c., for the term of, &c., at and under the yearly rent of, &c., payable, &c., free and clear from <sup>Rent.</sup> taxes, and without any deduction, (*determinable at the end of the first seven years, at the will of either the said A. B. or the said C. D.*) And it is hereby <sup>Covenants.</sup> agreed, that the said lease shall contain covenants on the part of the said C. D., to pay the rent (*yearly and every year during the said term, unless the said house should be burnt down, or destroyed by any inevitable accident,*) to repair the premises, (*damage by fire, tempest, and other inevitable accidents excepted,*) and to deliver up the same at the end of the said term, in good and tenantable repair, (*except as aforesaid;*) (*but if the lessee agrees to insure, add,*) and also to insure<sup>e</sup> the said premises from loss by fire, during the said term, in one of the insurance-offices in, &c., to be approved of by the said A. B., for the sum of, &c.; and also to rebuild and repair the said premises if destroyed or damaged by fire or otherwise,) and also not to assign<sup>f</sup> the said premises, (*nor carry on, or suffer to be carried on, upon the said premises, any kind of trade, (or any offensive or noisy trade,) without the licence of the said A. B.*) with all other usual and reasonable

<sup>e</sup> Unless the contract expressly stipulates in whose power it shall be to determine the lease, it will be considered in the power of the lessee. (*Dann v. Spurrier*, 3 B. and P. 442; *Webb v. Dickson*, 9 E. 16.)

<sup>f</sup> In the absence of this stipulation, "unless," &c., the lessee will be liable to rebuild in case of such accidents. (*Bullock v. Dommitt*, 6 T. R. 650; *Pym v. Blackburne*, 3 Ves. 34.) But to obviate this, it is usual to covenant for insuring the premises.

<sup>g</sup> If the house happen to be burnt down, the rent will still be payable, unless the contrary be agreed upon. (4 Taunt. 45; 18 Ves. 115.)

<sup>h</sup> It must be expressly stipulated that lessee is not to assign, if such restraint be intended. (12 Ves. 179.) Ante, p. 16.

covenants,<sup>b</sup> and which said intended lease shall contain a proviso for the re-entry of the said A. B., his heirs and assigns, in case of non-payment of the rent, for the space of thirty days after either of the said days appointed for payment, or of the non-performance of the covenants, to be contained in the said lease, and which said intended lease shall contain a covenant on the part of the said A. B., his heirs, executors, and administrators, for quiet enjoyment of the said premises by the said C. D., his executors and administrators, during the said term, upon payment of the rent, and performance of the covenants; and the said C. D. doth hereby agree to accept such lease as aforesaid, and to execute a counterpart thereof, and to pay the expense of these presents, and also of the said lease and counterpart, *(or, it is hereby agreed by the said parties that the expense of preparing these presents, and of the said lease, and also of a counterpart thereof, shall be paid by the said A. B. and C. D. equally.)* And, lastly, it is mutually agreed by and between the parties hereto, that the destruction of the said premises by fire, or other cause, shall not in anywise vacate this agreement, *(or shall vacate, &c., as it may be agreed upon.)*

In witness, &c.<sup>1</sup>

<sup>b</sup> In an agreement for the lease of a farm, it may be thus: "And which said indenture shall contain the following covenants on the part of the said C. D.; that is to say," setting forth shortly the covenants required to be performed by the lessee, and then stating shortly the covenants to be performed by lessor.

<sup>1</sup> Where it is stipulated that there shall be the usual covenants as are contained in leases of land in the neighbourhood, a court of equity will compel a specific performance. (6 Ves. 467.)

AGREEMENT FOR LETTING LODGINGS FOR ONE WEEK,  
AND FROM THENCEFORTH FROM WEEK TO WEEK.

MEMORANDUM,—That it is hereby declared and <sup>Weekly.</sup> agreed by and between J. W., of, &c., and J. G., of, &c., in manner following: that is to say, that the said J. W. hath agreed to let, and hereby doth let, and the said J. G. hath agreed to take, and hereby doth take, all that the back room, being on the north side of the first floor of the house now in the occupation of the said J. W., situated in N. street aforesaid, with conveniences and appurtenances belonging to the said room, to hold the same, with their ap- <sup>To hold.</sup> purtenances, and the sole and uninterrupted use and occupation thereof, unto the said J. G., his executors, administrators, and assigns, for the term of one week from the date hereof; and at the expiration of that time, that the said J. G. may hold the said apartment from week to week, at the same rent as aforesaid, until one week's notice be given by one of the said parties to the other. Provided always, and it is agreed between the said parties, that it shall not be necessary that such notice shall expire at the same day, time, or month of the year as the date of this agreement; but that the said J. W. and J. G., or either of them, shall and will accept and take one week's notice, at any period, as a sufficient notice for the conclusion of the term created by this agreement. As witness our hands, this      day, &c.

AGREEMENT AND CONDITIONS FOR LETTING A  
FARM.

Memorandum of agreement made and entered in- <sup>Parties.</sup> to this      day of      1840, between A. B., of, &c., of the one part, and C. D., of, &c., farmer, of the other part, as follows:

- To let.** The said A. B. agrees to let, and the said C. D. agrees to take and become tenant of, all that farm belonging to the said A. B., situate, &c., containing, &c., now in the occupation of, &c., with the appurtenances, for the term of one year, from the day of , at the yearly rent of L. , and so on from year to year, until the usual six months' notice to quit shall be given by either of the said parties to the other of them: the said letting and renting to be upon the terms and conditions following; that is to say;
- Term.**
- Conditions.** The landlord to pay the land-tax.  
 The tenant to do all material repairs of buildings;  
 To pay the rent half-yearly;  
 To pay all rates and taxes except the land-tax;  
 Not to break up or convert into tillage any meadow or pasture-land, under the penalty of twenty pounds an acre, and so in proportion for any greater or less quantity than an acre.  
 To manage the arable land in a good and husbandmanlike manner.  
 Not to underlet any part of the premises, without the consent of the said A. B., or the landlord for the time being.  
 Not to sell any hay, straw, stover, or stubble.  
 Not to sow or set more than acres of the said premises with potatoes, carrots, cabbages, or any other vegetable, except turnips, which are always to be fed and not carried off.  
 To allow A. B.'s gamekeeper and bailiffs to come upon any part of the grounds hereby demised, at any time he or they may think proper, for the purpose of hunting, shooting, coursing, and killing of game.  
 To imbarn, stack, and lay upon the premises, and not elsewhere, all the hay, straw, and other produce thereof; and all the dung and manure arising therefrom to carry out and spread upon such parts of the premises as most require it.  
 The dung and manure arising from the crop of the

last year, or any other dung which may not have been carried out at the time of quitting, to be left upon the farm-yards, or upon whatever part of the said demised premises the same may be, for the landlord's use.

Not to cut down, grub up, lop, top, or prune any timber-trees, or such as are likely to become timber.

Not to lop any pollard-tree under eight years' growth.

Not to sow two white crops successively, under the penalty of L.5 per acre.

Not to sow more than one-fourth of the arable land with wheat during the last year.

To quit the whole of the premises hereby demised, as well as the whole of the house, homestall, and land, at the expiration of six calendar months' notice to quit, and the growing crop of wheat to be sold to the incoming tenant at a valuation, and the amount of such valuation to be paid at the ensuing harvest.\*

As witness, &c.

AGREEMENT BY A LESSEE FOR LETTING PREMISES  
(HELD BY HIM UNDER A LEASE) FOR A SHORT  
TERM.

Articles of agreement indented, had, made, concluded, and agreed upon, this            day of  
between A. B., of, &c., and C. D., of, &c.

Whereas the said A. B. hath agreed to let and

Recital of  
agreement to  
let.

\* If there should be conditions for a lease, the memorandum of agreement may be as follows:—"Memorandum: That the said A. B. agrees to let and demise, and the said C. D. agrees to take and become tenant of, the said farm, lands, and hereditaments, for the term of, &c., determinable, &c., upon conditions hereinbefore mentioned, and to be contained in the lease and counterpart thereof, to be forthwith prepared, and executed by them at their joint expense. As witness," &c.



demise to the said C. D. the warehouses and coach-houses after mentioned, for the term of        years from        next ensuing, at the yearly rent of L.       , clear of all taxes; and the said C. D. hath agreed to take the same, and become a tenant thereof, to the said A. B., for the term, and at the rent aforesaid. Now, therefore, the said A. B. doth hereby let and demise<sup>1</sup> unto the said C. D. all that, &c., and also all that upper warehouse or loft over the same, situate and being in, &c., and being part of certain leasehold premises demised to the said A. B. by indenture of lease, under which he now holds the same, and are situate at       , together with the appurtenances thereto belonging; to hold the same to the said C. D. for the term of        years from        next ensuing, at the yearly rent of L.

per annum, payable quarterly. And the said A. B. doth hereby covenant, promise, and agree, &c., that the said C. D., his executors, administrators, and assigns, shall and may during all the said term of        years peaceably and quietly have, hold, use, and occupy the said, &c., with their appurtenances, and all and singular the several fixtures and things mentioned in the schedule thereof hereunder written; together with free liberty of ingress, egress, and regress, to and for him, the said C. D., his executors, administrators, and assigns, and his or their servants, or others, with horses, carts, and carriages, or without, as occasion shall require, in and through the yard and gateway leading to the said premises, from        next ensuing, for, during, and until the said term of        years be fully complete and ended.

And also shall and will well and truly save, keep harmless, and indemnified, the said C. D., his ex-

Covenant  
to enjoy  
quietly.

Reservation  
of rights of  
way.

To indem-  
nify tenant  
from pay-  
ment of  
taxes.

<sup>1</sup> Where there are words importing a present demise, the instrument will require a lease-stamp. (*Doe v. Groves*, 15 East, 244.)

utors, administrators, and assigns, and his and their goods, chattels, and effects, of, from, and against the payment of all or any rates, taxes, dues, charges, and assessments whatsoever, which now are, or which shall or may during the said term of        years be rated, charged, imposed, or assessed on the said demised premises, or any part thereof.

And also, that it shall and may be lawful to and for the said C. D., his executors, administrators, and assigns, at the end of the said term, to take down, remove, and carry away all such shelves, doors, partitions, fastenings, or other erections, amendments, or improvements, which he or they shall or may during the said term of        years have affixed or set up, in, to, or upon the said premises, or any part thereof, doing no material damage to the said premises.

Tenant to remove fixtures put up by him.

And the said C. D. doth hereby covenant, promise, and agree, to and with the said A. B., his executors, administrators, and assigns, that the said C. D. shall and will take the said warehouse and premises, and become tenant thereof for the said term of        years from        next ensuing; and also that he, the said C. D., his executors, administrators, and assigns, shall and will, during all the said term, well and truly pay, or cause to be paid, to the said A. B., his executors, administrators, or assigns, the clear yearly rent or sum of L.        of lawful, &c., by even and equal half-yearly payments, the first payment thereof to be made on the        day of        now next ensuing.

Tenant agrees to take.

And also shall and will, at the end of the said term of        years hereby granted, peaceably and quietly leave, surrender, and yield up to the said A. B., his executors, administrators, or assigns, the said warehouse, &c., in tenantable repair, together with all and singular the fixtures mentioned in the said schedule, in as good condition as the same now are, (reasonable use and wear thereof, and casualties

And also to yield up.

by fire, or any other inevitable accidents in the meantime, only excepted.)

And to indemnify  
tenant in  
restoration  
of premises.

And also shall and will, in the meantime, save harmless and keep indemnified him, the said A. B., of and from all damages whatsoever, and all costs and expenses occasioned thereby, which can or may arise to any part of the said premises of the said A. B., by reason of such use, occupation, ingress, egress, or regress of him, the said C. D., his servants, or others hereinbefore mentioned.

In witness, &c.

AGREEMENT FOR A LEASE OF A HOUSE (UNDER  
CONDITIONS OF SALE.)

Memorandum of an agreement made, &c.,  
between, &c.

Power to  
lease.

Let by public  
auction.

Whereas the messuage or tenement, garden, and premises hereinafter mentioned, were this day offered to be let by public auction to the highest bidder, at, &c., on, &c., pursuant to advertisement for that purpose published, &c., in and under certain printed conditions then and there exhibited; and whereas the said [*lessee*] having offered at the said auction the sum of L. per annum, as a rent for the said messuage or tenement, garden, and premises, he was declared to be the highest bidder for the same. Now these presents witness, that in consideration of the agreement hereinafter expressed on the part of the said [*lessee*,] his heirs, executors, administrators, and assigns, to be performed, the said [*lessor*,] for himself, his heirs, executors, and administrators, and for the granting and demising, and entering into the covenant for the quiet possession of the said capital messuage or tenement, ground, and premises, hereinafter mentioned, doth promise and agree with and to the said [*lessee*,] his executors, administrators, and assigns, by these presents, in manner following, (that is to say :) That he, the said [*lessor*,] or his assigns,

shall and will, on or before the                      of                      next,  
at the request, costs, and charges of the said [*lessee*,]  
his executors, administrators, or assigns, grant and Agreement to grant a lease.  
execute unto the said [*lessee*,] his executors, administrators, and assigns, a good and sufficient demise or lease of all that capital messuage, &c., for a term of, &c., to commence from the, &c., at and under the clear yearly rent of L.                      ,  
to be reserved in the said lease, and payable quarterly on the four feast days usually appointed for payment of rent in the year, free from the land-tax, and all other taxes that shall or may be assessed during the term hereby agreed to be granted, the first quarterly payment of which said rent to be made on, &c., now next ensuing.

And also, that in the deed or indenture by which For quiet enjoyment.  
the said mansion-house, land, and premises, shall be demised, the [*lessor*] shall and will covenant and promise in the usual manner for the quiet enjoyment of the same premises during the said term of                      .  
And in consideration of the agreement hereinbefore expressed on the part of the said [*lessor*,] the said [*lessee*,] for himself, his heirs, executors, and administrators, doth promise and agree with and to the said [*lessor*,] and his assigns, by these presents, in manner following; (that is to say,) That the said Counter-part.  
[*lessee*,] his executors, administrators, or assigns, shall and will accept the said lease, and execute a counterpart thereof, and in which said indentures shall be contained the following covenants; (that is to say,) That, &c. [*Add such clauses as may be required.*]

In witness, &c.

*Observations on Agreements for Leases.*

A landlord has no right to distrain for rent, unless Landlord's right of distress.  
there be *an actual demise at a specific rent.* (Hegan v. Johnson, 2 Taunt. 148. Dunk v. Hunter, 5 B. and A. 324.)

If *under a mere agreement* for a lease at a certain rent, the tenant is let into possession before the lease is executed, the lessor cannot distrain during the first year, for there is in that case *no actual demise*, either express or implied. (*Hegan v. Johnson*, ubi *suprà*.) The mere act of taking possession under an agreement renders the party tenant at will; and while that relation subsists no distress can be made; but an action on a *quantum valebat* may be maintained; but as soon as rent is paid under the agreement, the occupier becomes tenant under an *implied demise* from year to year, according to the provisions of that agreement, and continues so until an actual lease is executed. (*Hammerton v. Steed*, 3 B. and C. 478.)

When an instrument should be construed a lease or agreement.

Whether an instrument shall be construed as a lease, or only an agreement for a lease, depends on the *intention* of the parties, as it is to be collected from the whole instrument. Although there be words of present demise, if it appear that the *intent* of the parties was to give a *future* lease, it shall be considered as an agreement only. (*Morgan v. Bissell*, 3 Taunt. 65. *Doe v. Ashburner*, 5 T. R. 163. *Hammerton v. Steed*, ubi *suprà*.) And, *è converso*, words importing an intention of future completion may by the context work a present demise. (*Barry v. Nugent*, 5 T. R. 165.)

Mode of preparing executory agreements.

It seems that the best course to be pursued in preparing executory agreements for leases, when the term is to exceed three years, is to add a provision, that in the meantime, until a lease shall be executed in pursuance thereof, the tenant shall enter and occupy from a certain day, as tenant from year to year, and under the rents, covenants, and agreements stipulated to be inserted in the lease; but the agreement must *not be under seal*, for in that case it will require a deed-stamp. (*Clayton v. Burtenshaw*, 5 Barn. and Cress. 41; *Robinson v. Dryborough*, 6 T. R. 317.)

*An Agreement for building a House.*

Memorandum, that on this                      day of, &c., it is <sup>Parties.</sup> agreed between A. B., of, &c., and C. D., of, &c., in manner and form following. The said C. D., for the considerations hereinafter mentioned, doth for himself, his heirs, executors, and administrators, covenant and agree with the said A. B., his executors, administrators, and assigns, that he, the said C. D., or his assigns, shall and will, within the space of                      next after the date hereof, in a good and workmanlike manner, and according to the best of his knowledge and skill, well and substantially erect, build, and finish at                      a house or messuage, according to the plan hereunto annexed, of the dimensions following, viz.:                      and erect the same with such stone or brick, timber, and other materials, as the said A. B. or his assigns shall find and provide for such purpose: In consideration whereof, the said A. B. doth <sup>Consideration.</sup> for himself, his executors and administrators, covenant with the said C. D., his executors, administrators, and assigns, well and truly to pay unto the said C. D., his executors, administrators, or assigns, the sum of L.                      of lawful money of Great Britain, in manner following; (that is to say,) L.                      part thereof at the beginning of the said work; L.                      more, another part thereof, when the said work shall be half done; and the remaining L.                      in full for the said work, when the same shall be completely finished; and also that he, the said A. B., his executors, administrators, or assigns, shall and will, at his and their own proper expense, find and provide all the stone, brick, tile, timber, and other materials necessary for making and building of the said house. And for the true performance of all and every the <sup>Penal clause.</sup> articles, clauses, and agreements above mentioned, the said A. B. and C. D. do hereby bind themselves, their executors, administrators, and assigns, each to

the other of them in the sum of L. , to be recovered as liquidated damages.<sup>m</sup> In witness, &c.

*Agreement to let a Field for Building, &c.*

Memorandum of agreement made this day of, &c., between I. C., of, &c., Esq., of the one part, and W. H., of, &c., of the other part, as follows: That is to say,

Consideration.

In consideration of the said W. H., having agreed to build a dwelling-house, with all proper appurtenances thereto, on the piece or parcel of land, &c., as hereinafter mentioned, he, the said I. C., doth hereby promise and agree to and with the said W. H., that as soon as such dwelling-house as above-mentioned shall be covered in, he, the said I. C., shall and will grant and execute a demise and lease of the said piece or parcel of land to him, the said W. H., his executors, administrators, and assigns, from day now last past for the term of then next ensuing, subject to the payment by the said W. H., his executors, administrators, or assigns, of an annual rent of L. , besides all charges and taxes whatsoever; but so that during the first three years of the said term, it shall be lawful for the said W. H. to deduct and retain thereout one-third part of the said annual

<sup>m</sup> By fixing the amount of damages in the penal clause, the necessity of a reference to a jury is prevented; (*Astley v. Welden*, 2 Bos. and Pull. 346.) Unless it be mentioned as *liquidated* or *ascertained* damages, the court will not consider it as such; the insertion of the words "penal sum" or "penalty" precludes the court from considering it as liquidated damages; (*Smith v. Dickenson*, 3 Bos. and Pull. 630; *Street v. Rigby*, 6 Ves. 218;) but if the damages are inadequate, a court of equity will compel a specific performance; (*Hobson v. Trevor*, 2 P. Wms. 191; *Goring v. Nash*, 3 Atk. 186; *Prebble v. Boghurst*, 1 Swanst. 309;) but covenanting under a penalty will not prevent the covenantee waiving the penalty, and recovering damages for breach of the covenant; (*Harrison v. Wright*, 13 East, 343.)

rent for his own use and benefit ; and it is hereby agreed that the said intended lease shall contain all usual covenants, and also covenants on the part of the said W. H., that no bricks, tiles, or other wares, shall be made upon the said premises ; that the said premises shall not be used as inn, tavern, or public-house ; that no trade or manufactory whatsoever shall be carried on, in, or upon said premises ; that no gravel or loam shall be dug and sold, or any dilapidations or waste be committed or suffered on any part of the said premises ; and that the said W. H. shall and will insure, and keep the said premises insured from fire in the sum of L.

And the said W. H. doth hereby promise and agree Counterpart. to accept and take such lease, and to execute a counterpart thereof, when tendered to him for that purpose, and to pay the said I. C., or his solicitor, the costs and charges of preparing and completing the said lease and a counterpart thereof.

And also, that he, the said W. H., shall and will, Plan. before he shall erect any building upon the said piece of land, submit to the inspection of the said I. C. a plan and elevation of the dwelling-house, out-offices, and apartments thereon to be erected as after-mentioned, for his approbation ; and when and so soon as such plan and elevation shall have been approved by him, shall and will forthwith proceed to erect, and, within the space of months then next ensuing, cover in, finish, and complete, in a substantial and workmanlike manner, a good and substantial brick-built messuage or dwelling-house, with suitable chaise-house, stables, offices, and appurtenances, and fence-walls, agreeably to the said plan so approved, at his, the said W. H.'s, own proper costs and charges ; and that the dwelling-house shall be placed at not less than feet from a private road, intended to be made on the north-east side of the said land, at the expense of the said I. C. ; and that no building which shall be erected at more than the space of feet beyond the back line of the back front of



the said dwelling-house shall be built of any height above        feet from the surface of the ground; and that the said W. H. shall lay out and expend in the building of the dwelling-house, exclusive of all other erections, a sum not less than L.       ; and shall and will, at his own expense, erect forthwith a park paling of oak of five feet in height from the surface of the ground, on the sides of the said piece of land so agreed to be taken by him as aforesaid.

In witness, &c.

*Agreement between a Master and his Clerk.<sup>a</sup>*

Parties.

Articles of Agreement, &c., between A. B., of  
&c., and C. D., of, &c.

Considerations.

The said C. D., for the considerations hereinafter mentioned, doth hereby, for himself, his executors, and administrators, covenant, promise, and agree to and with the said A. B., his executors and administrators, by these presents, that he, the said C. D., shall and will, during the space of       , to commence from the day of the date hereof, dwell, continue, and abide in the house of the said A. B., and him diligently and faithfully serve during the said term in keeping the books of account of him, the said A. B., and in such other employment, business, and affairs, as he, the said A. B., shall think proper to employ him in during the said term; and therein shall, from time to time, and at all times during the said term, observe, fulfil, and keep the lawful and reasonable commands and directions of the said A. B., without disclosing the same, or the secrets of his employment, business, or dealings, to any person or persons whomsoever; and shall not at any time hereafter during the said term correspond with any person or persons corresponding with the said A. B., nor use any traffic or dealing in the way of the said A. B., either for himself or any person or persons, other than the said A. B., without the permission and

To serve.

Secrecy.

<sup>a</sup> This precedent may be applied to a master and servant.

consent of the said A. B. first had and obtained for that purpose. And the said C. D., for himself, his executors, and administrators, doth hereby further covenant, promise, and agree to and with the said A. B., his executors and administrators, that he, the said C. D., shall and will, from time to time during the said term, write and keep a true and perfect account and accounts for him, the said A. B., and will not embezzle, purloin, wilfully waste, or mispend any of the goods, wares, moneys, merchandise, and commodities of the said A. B., his servants, family, or any of them. And also shall and will, upon every request to him made for that purpose, make and give unto the said A. B., his executors or administrators, a full, true, just, and perfect account in writing of all moneys, goods, and commodities which he shall at any time during the said term receive, deliver, pay, or dispose of for or upon the account, or for the use or by the order of the said A. B. And also that he, the said C. D., his executors or administrators, shall and will well and truly pay, or cause to be paid, unto the said A. B., his executors or administrators, all such sum or sums of money as shall appear to be due upon the foot of any such account or accounts. And further, that he, the said C. D., shall not nor will at any time or times during the said term, trust or deliver upon credit, or pay any of the goods, wares, merchandises, moneys, or securities of or belonging to or in the hands, custody, or power of the said A. B. to any person or persons whomsoever, without the previous consent and direction of the said A. B. In consideration of all which said services to be observed, done, and performed by the said C. D. as aforesaid, he, the said A. B., doth hereby covenant and promise for himself, his executors, and administrators, that he, the said A. B., shall and will pay and allow unto him, the said C. D., the annual sum of L. for every year during the aforesaid term of three years, by even quarterly payments, the first quarterly payment thereof to be made on, &c.; and shall and

To make true  
accounts.

And to duly  
pay, &c.

Not to trust  
on credit.

Yearly allow-  
ance.

to England. Now know ye, therefore, that we, the said W. P. and J. H., do hereby respectively undertake and agree to and with the said C. H. T., his heirs and assigns, forthwith, or as soon as conveniently may be after the return of the said A. B. into England, to procure him to execute and deliver the said recited indenture of release, bearing even date herewith. As witness our hands, &c.

*\* Agreement to Execute an Assignment of Leasehold Premises as a Collateral Security.*

Agreement made, &c., between, &c.

Recital.

Whereas, under and by virtue of a certain indenture of lease, dated, &c., the said A. B. is possessed of, or entitled to, all that messuage, &c., now in his own occupation, situate, &c., for the residue of a certain term of            years, thereby created. And whereas the said A. B. hath this day borrowed of and from the said E. F. the sum of L.500, and for securing the repayment of the same, and interest, hath entered into a certain bond or obligation, dated, &c., in the penal sum of L.            conditioned for making void the same, on payment of the said sum of L.500 and interest, on the day of next; and for the more effectually securing the payment of the same, hath deposited with the said C. D., the said indenture of lease as a collateral security. Now, the said A. B., for himself, his heirs, executors, and administrators, doth hereby promise and agree to and with the said C. D., his executors, administrators, and assigns, that the premises comprised in the said indenture of lease shall be and remain as a further security for ensuring the repayment of the said sum of L.            and interest, mentioned in the said bond: and that he, the said A. B., his executors or

\* This form may be easily adapted to an agreement to mortgage by way of underlease, which is the more approved course.

administrators, shall and will, at any time or times hereafter, upon the request of the said E. F., &c., and at the costs and charges of the said A. B., make and execute, or cause to be made and executed, unto the said E. F., his executors and administrators, a good and sufficient legal assignment or transfer of the said lease, and the premises therein comprised, for the remainder then to come and unexpired of the said term of        years, as and in the nature of a mortgage thereof, for the purpose of securing the repayment of the said sum of L.       , and all interest to grow due thereon. In witness, &c.

*To bear equal Shares in a Law-Suit.\**

Articles of Agreement, &c. (*Recitals.*) And *Recitals.*  
 whereas it is agreed by and between the said parties, that if any such suit or suits, action or actions, shall be brought, commenced, or prosecuted by or against the said parties, any or either of them, at any time or times hereafter, that they and every of them do and shall bear and pay their respective and equal shares and parts of the costs and damages thereof. Now, these presents witness that the said, &c., and every of them, do hereby covenant, promise, and agree to and with each other, that they, the said, &c., and every of them, their and each and every of their executors, administrators, and assigns, shall and will pay and bear their respective equal shares and proportions of all costs and damages of all and every such action and actions, suit and suits, (if any,) that at any time or times hereafter shall or may be brought by or against them, or any or either of them, on that account. In witness, &c. *Agreement.*

\* Such an agreement ought not to be entered into except between persons defending a common right, or otherwise interested in the result.

*Agreement for compromising a Law-Suit, and  
relinquishing a Claim to Estates.*

An Agreement made, &c., between A. B., of, &c.,  
of the one part, and C. D., of, &c., of the other  
part.

Recitals.

Whereas the said A. B. having set up or claimed  
some right, title, or interest in, to, from, or out of  
all, &c., [*describe the hereditaments,*] and accordingly,  
to try such right, he did in, or as of, Michaelmas term  
last, commence an action of ejectment to recover  
possession of the said hereditaments and premises.

To prevent  
litigation.

And whereas, in order to prevent litigation, and  
adjust all differences between the said A. B. and C.  
D., in regard to such claim, and to compromise all  
matters between them, it hath been proposed and  
agreed that the said C. D. shall pay to the said A.  
B. the sum of L. in full, for all his interest, right,  
title, claim, or demand whatsoever, of, in, to, from, or  
out of the said estates, and all arrears of rent there-  
from, and of and in the timber thereon, whether felled  
or growing, in any manner howsoever, and that he  
shall execute all such deeds or other assurances  
thereof as hereinafter mentioned, and that proceed-  
ings shall cease, and each party pay their own re-  
spective costs. Now, therefore, these presents wit-  
ness, that to the end, and for the purposes aforesaid, it  
is hereby mutually covenanted, declared, and agreed  
by and between them, the said A. B. and C. D., and  
each of them doth hereby severally covenant, promise,  
undertake, and agree, for himself respectively, and for  
his heirs, executors, and administrators, to and with the  
other of them, his heirs, executors, administrators, and

Witnessing  
part.

All proceed-  
ings to  
cease.

Agreement  
by A. B. to  
convey his  
interest.

assigns, that henceforth all proceedings at law or  
equity, relative to the said estates, shall cease, and be  
no longer or further prosecuted or proceeded in, and  
that each of them shall pay their own costs. And,  
further, that he, the said A. B., his heirs or assigns,  
shall and will, on or before the day of  
next ensuing, or when thereto required, by and at

the costs of the said C. D., his heirs, executors, administrators, or assigns, by such deeds, conveyances, and assurances as he or they, or his or their counsel shall advise or require, well and effectually grant, release, convey, or otherwise assure unto and to the use of the said C. D., his heirs and assigns, or as he or they shall direct or appoint, free from all incumbrances made, done, executed, or suffered by him, the said A. B., all such estate, right, title, interest, inheritance, claim, or demand whatsoever, which, either at law or in equity, or in any other manner howsoever, he has, or might, or could have, claim, challenge, or demand of, in, to, or out of the said estate, hereditaments, and premises, and also of, in, to, out of, or from all rents and arrears of rents in respect of the same estates, hereditaments, and premises, and also of, in, to, out of, or from all timber and other trees, now or at any time heretofore growing upon the same premises. In consideration whereof, he, the said C. D., doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said A. B., his executors, administrators, and assigns, that he, the said C. D., his heirs, executors, or administrators, shall and will, (upon having such conveyance and assurance as aforesaid made and executed in manner hereinbefore mentioned,) well and truly pay, or cause to be paid, unto the said A. B., his executors, administrators, or assigns, the said sum of L.1000, with interest for the same, after the rate, &c., until paid; and which, it is hereby declared, is to be in full for all the estate, right, title, and interest of the said A. B., in and to the said hereditaments, or any part thereof. In witness, &c.

Consideration.

### *Agreement for Reference.*

Agreement made, &c.

Whereas disputes and differences have arisen and are subsisting between the above-named parties concerning, &c. Now, these presents witness, and it is

hereby agreed by and between the said parties, to refer all disputes and differences whatsoever between them to the award and final determination of, &c.; and that they will respectively obey, observe, perform, fulfil, and keep the award of the said, &c., of and concerning the premises, so that the same be in writing, and signed by him or or before the, &c., next ensuing, with power for the said, &c., to enlarge the time for making his award from time to time as he shall think fit. And we, the said parties, do respectively agree that the witnesses upon the said reference shall be examined before the said arbitrator upon oath. And we, the said parties, do hereby further respectively agree to produce all books, vouchers, accounts, and documents in our possession or power before the said arbitrator as he shall require; and do all other acts needful and necessary to enable the said, &c., to make a just award of and concerning the premises. And it is further agreed that the costs of this reference, and of the said A. B.'s award, *shall be in his discretion*; and that these presents, and the submission hereby made of the said matters in difference, shall be made a rule of her Majesty's Court of, &c., pursuant to the statute in that case made and provided.

As witness, &c.

*Agreement to refer a Cause in Chancery to Arbitration.*

Agreement made, &c., between, &c.

[*Recite the proceedings in Chancery.*]

As to ending matters in controversy.

And whereas the said, &c., for the purpose of putting an end to all further controversy touching the several matters in question in the said cause or suit in Chancery, have respectively agreed to refer all questions, differences, and disputes whatsoever now pending in the said cause or suit, and also by whom, to whom, and in what manner, the costs of all the parties in such cause or suit shall be paid, to the consideration, judgment, and arbitrament, and

final award of R. B., of, &c., barrister-at-law ; and further, that the said reference and submission shall and may, in pursuance of the statute in that behalf made and provided, be made an order of her Majesty's Court of Queen's Bench, if the said court shall think fit to order the same. Now, these presents witness, that, for the consideration and purposes aforesaid, it is hereby declared and agreed upon by and between all and every the said parties to these presents, that they, the said parties hereto, and each of them, their and each and every of their heirs, executors, and administrators, on his and their several and respective parts and behalves, shall and will well and truly stand to, abide by, perform, fulfil, and keep the order, arbitrament, final determination, and award of the said R. B., the arbitrator so as aforesaid indifferently named and chosen by them, the said parties hereto, to adjudge, arbitrate, determine, order, and award between them of and concerning all questions, titles, controversies, differences, and disputes now depending or subsisting between them in the said cause or suit in Chancery ; and also by whom, and in what manner, and to whom the costs of all the respective parties to the said cause or suit and of this arbitration are or ought to be paid, so as the said arbitrator shall make such his order, arbitrament, final determination, and award, in writing, under his hand and seal, ready to be delivered to the said parties submitting thereto, or such of them as shall require the same, on or before the first day of            term next ensuing the day of the date of these presents. And it is hereby agreed by and between all the said parties hereto, that no action at law or suit in equity shall be commenced or prosecuted by any or either of them against the said R. B. for or on account of his award to be made pursuant to this agreement.

In witness, &c.



## CHAPTER IX.

### ANSWERS IN CHANCERY.

THE following practical directions, relating to the preparation and mode of taking answers, are principally taken from a very useful work on Chancery Practice.<sup>o</sup> "In preparing the instructions for answers," says the writer of that work, "a distinct answer should be given to each interrogatory, and to every part of each interrogatory, showing whether the fact be as alleged or not, or whether the defendant knows it or not, or whether he believes it or not; and any new fact necessary to explain it, or qualify it, may be stated, but particular care should be taken to show what answer is to be given to each interrogatory, and any statement of facts not contained or alluded to in the bill necessary to the proper understanding of the defendant's case, should be separately written out; and if there be any material deeds or documents necessary to be seen by counsel, copies of them should accompany the instructions. It is a bad practice to send original documents for this purpose, as they are liable to be lost. In all cases where it is possible, the instructions for answer should be taken from the defendant's own mouth, for, where that is not done, it is often necessary to alter the answer after it has been drawn by counsel," which occasions an additional expense to the client of a fee

<sup>o</sup> Gray's Country Solicitor's Chancery Practice.

to counsel for revising it; "and where the draft of an answer is altered in the country, and counsel does not again see it till after it has been filed, it often happens that those statements he has not seen interfere greatly with his view of the case, and he finds that the answer has been put in a very different way from what he would have drawn it had he been aware of those facts at the time he did so. When this happens, (and it is not unfrequently,) it often operates greatly to the prejudice of a defendant's case. In some instances, it even occasions his total failure in the cause, and as a general rule, no material alterations in an answer should be made after it is drawn, without laying it again before counsel to approve of them."

Any person, whether a solicitor or not, may be appointed a commissioner to take an answer. The plaintiff is entitled, if he choose, to have a commissioner of his own nomination present at the taking of the answer.

Where several defendants join in one answer, and cannot meet at one time and place, two commissioners should be named residing at each place where a defendant resides, and one commissioner should travel from place to place to take the answer of each defendant, and when all the defendants have been sworn to the answer, that commissioner delivers it to a messenger to bring to London in the usual way.

If the plaintiff has joined in commission, it will appear, from the label to the dedimus, to which of the plaintiff's commissioners the notice of taking the answer is to be given, and such notice should be given at least six days before the time appointed; and at the time appointed, the plaintiff's commissioner has a right to read the answer if he chooses. Two of the commissioners must be present at the taking of the answer, and the fees of two only will be allowed. The answer having been engrossed and signed by the defendant, (and a conscientious com-

missioner will carefully read it over to him, particularly if he be illiterate, and must do so if he be a marksman,) they proceed to take it in this manner: One of the commissioners takes the answer, and asks the defendant if he has read, or heard read, that his answer [or answer and plea,] or [answer and demurrer, or plea and demurrer,] or [plea, answer, and demurrer, as the case may be,] and whether he exhibits it as his answer or plea, &c., as before to the bill of complaint of A. B., (the plaintiff.) The defendant answers in the affirmative, and one of the commissioners then administers to him the oath in the following form:

*"You swear that what is contained in this your answer, [or plea, or plea and answer,] as far as concerns your own act and deed, is true of your own knowledge, and that what relates to the act and deed of any other person or persons you believe to be true. So help you God."* If the defendant be a peer or peeress, the answer is not taken upon oath, but on protestation of honour, which may be administered in this form: *"My Lord, so much of this your answer, as concerns your own acts or deeds, you wage your honour to be true, and so much as concerns the acts and deeds of any other person or persons you believe to be true."*

The caption of the answer, after it has been sworn to, must be written and signed by the commissioners. It is usually written at the foot of the answer; they must then indorse a return on the dedimus in the following words: *"The execution of this commission appears in a certain schedule [or schedules, if more than one skin] hereto annexed;"* and they must both sign their names to this return. The answer, when taken, must be annexed to the dedimus, and the whole folded up together in a convenient size and form, so as to leave out the label of the dedimus. It should then be bound round with tape, at the crossings of which the commissioners affix their seals; they then inscribe their names in the vacant spaces. Each commis-

sioner is entitled to a fee of thirteen shillings and fourpence for taking the answer; the answer thus taken may be brought to the Six Clerks' office, by one of the commissioners, or sent up by a messenger, to whom it must be delivered by one of the commissioners who has taken it, and the messenger must know from whom he received it, and must keep it in his possession till he is sworn in London. The formal parts of the conclusion of most answers are the denial of combination, and the general traverse. As they are only referred to in the drafts prepared by counsel, the forms are here given at length.

And this defendant denies [or, these defendants deny] all and all manner of unlawful combination and confederacy, wherewith he is [or they are] charged by the said bill.

Without this, that there is any other matter, cause, or thing, in the said complainant's bill of complaint contained material or necessary for this defendant [these defendants] to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true, to the knowledge or belief of this defendant, [these defendants.] All which matters and things this defendant is [these defendants are] ready and willing to aver, maintain, and prove, as this honourable court shall direct, and humbly prays [pray] to be hence dismissed with his [their] reasonable costs and charges in this behalf most wrongfully sustained.

[*Copy of Counsel's signature.*]

[*Defendant's signature.*]

## CHAPTER X.

### APPOINTMENTS.

#### *An Appointment, by a Feme Covert, of Stock in the Funds, in pursuance of a Power of Appointment.*

Parties.	THIS indenture, made, &c., between A. B., wife of C. D., of, &c., of the first part ; C. D., of, &c., of the second part ; and ( <i>trustees of the settlement</i> ) of the
Recitals.	third part. [ <i>Recite the settlement giving the power of appointment, with such power, fully, and that the marriage was duly solemnized.</i> ] And whereas, on or about the       day, &c., the said [ <i>trustees,</i> ] at the request and by the direction of the said A. B., and with the approbation of the said C. D., (testified by their respectively executing these presents,) sold the said       3 per cent. consolidated bank annuities, and the moneys produced by such sale, after deducting the usual commission for brokerage, amounted to the sum of L.       .
Witnessing part.	And whereas, in anticipation of, and with a view to the appointment intended to be hereby made, the said [ <i>trustees</i> ] have, at the like request and direction, and so testified as aforesaid, paid the said sum of L.       to the said C. D., as he and also the said A. B. doth hereby acknowledge. Now, this indenture witnesseth, that, in pursuance of the power or authority to the said A. B. for that purpose reserved in and by the said recited inden-

ture of settlement, and by force and virtue thereof, and of every other power, right, and authority to her given, or reserved, or in any wise enabling her in this behalf, she, the said A. B., hath directed and appointed, and by this present deed or writing, by her sealed and delivered, in the presence of, and attested by, two credible witnesses, doth direct and appoint that the said

Appoint-  
ment.

3 per cent. consolidated bank annuities so transferred into the names of the said [trustees] as aforesaid, or the moneys which have been produced by sale thereof as aforesaid, shall henceforth belong to, and be the absolute property of the said C. D., his executors, administrators, and assigns. And this indenture further witnesseth, that, in consideration of the premises, and also in consideration of the said sum of L. so paid to the said C. D. by the said [trustees] as aforesaid,

Further wit-  
nesseth.

they, the said C. D. and A. B. his wife, have each of them, hath remised, released, and for ever quitted claim, and by these presents do, &c., unto the said [trustees,] and each of them, their and each of their heirs, executors, and administrators, all and all manner of actions, suits, cause, and causes of action, suit, controversy, differences, debts, duties, accounts, reckonings, sum and sums of money, and all other claims and demands whatsoever, both at law and in equity, which they, the said C. D. and A. B. his wife, or either of them, their or either of their executors or administrators, or any person or persons on his, her, their, or any of their behalf, now have or hath, or at any time or times hereafter, can, shall, or may have, claim, challenge, or demand upon or against the said [trustees,] or either of them, their or either of their heirs, executors, or administrators, for, or by reason, or on account of the said L. 3 per cent. consolidated bank annuities, or any part thereof, or of the sale or transfer thereof, or upon, or by reason, or on account of the payment and application of the said moneys which arose by the sale thereof, or of the di-

Release of  
trustees from  
the sum ap-  
pointed, and  
all actions.

Indemnity  
clause to  
trustees.

vidends, and annual produce of the said bank annuities, previously to the sale thereof. And this indenture witnesseth, that, in consideration of the premises, the said C. D. doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said [*trustees,*] their executors or administrators, that he, the said C. D., his heirs, executors, or administrators, shall and will, from time to time, and at all times hereafter, well and effectually *save, defend, keep harmless and indemnified*, the said [*trustees,*] their executors and administrators, lands and tenements, goods and chattels, of, from, and against all actions, suits, and other proceedings, at law and in equity, which can, shall, or may, at any time or times hereafter, be brought, had, commenced, sued, or prosecuted against the said [*trustees,*] or either of them, their or either of their heirs, executors, or administrators, and of, from, and against all loss, costs, charges, damages, and expenses, which they, or any or either of them, shall or may pay, sustain, or be put unto, for, or by reason, or on account of the said bank annuities, or any part thereof, or of the sale or transfer thereof as aforesaid, or for, or by reason, or on account of the payment or application of the moneys which arose by the sale thereof as aforesaid, or upon, or by reason, or on account of any act, matter, or thing in anywise relating thereto.

In witness, &c.

*Appointment of a Guardian by an Infant.\**

Appointment.

Know all men by these presents, that I, [*A. B.,*] of, &c., spinster, aged      years, or thereabouts, daughter of C. B., late of, &c., deceased, have chosen, nominated, and appointed, and by these presents do choose, nominate, and appoint C. D., of, &c., to be

\* If this appointment is made by deed, which prudence would dictate as the proper course, it will be liable to a L. 1, 15s. stamp.

my guardian, to do, execute, and perform, during my minority, all such acts, matters, and things whatsoever, for me and on my behalf, relating to me and my estate, as a guardian<sup>1</sup> may or ought to do.

*An Election and Appointment of a Guardian by a Minor, of Person and Estate, with Power to let Lands, &c.*

Know all men by these presents, that I, A. B., Appointment.  
son and heir of T. B., late of, &c., being of the age of fourteen years, have nominated, elected, and appointed, and by these presents do nominate, elect, and appoint, P. M., of, &c., to be guardian of my person and estate, until I shall attain the age of twenty-one years. And I hereby promise to be ruled and governed by him in all things touching my welfare. And I do also hereby authorize and empower the said P. M. to enter upon and take possession of all and every my messuages, lands, tenements, hereditaments, and premises whatsoever, situate, lying, and being in           , in the county of           , or elsewhere, whereunto I have, or may have, any right or title, and to let and sell the same, and receive and take the rents, issues, and profits thereof, for my use and benefit, during the term aforesaid; giving unto the said P. M. full power in the premises; and whatsoever he shall lawfully do, or cause to be done in the said premises, by virtue hereof, I do hereby promise to confirm.

In witness, &c.

<sup>1</sup> To prevent the necessity of applying to the chancellor, in case of the guardian's incapacity or refusal to act, it seems advisable to add, "But such guardianship to cease in case the said [*guardian*] should go to reside abroad, refuse, or become incapable to act in the said guardianship, or become bankrupt or insolvent."



*Appointment, by a Father, of a Guardian for his Son after his Decease.\**

**Appointment.** Know all men by these presents, that I, A. B., of, &c., have committed and disposed, and by these presents do commit and dispose, unto P. D., of, &c., the custody, tuition, and education of my son A. B., from and immediately after my decease, until my said son shall attain his age of twenty-one years ; and if it shall happen that the said P. D. shall die before me, or before my said son attains his age of twenty-one years, then, and in such case, I do commit and dispose unto I. D., of, &c., such custody, tuition, and education, after my decease, and the decease of the said M. P., until my said son attains his age of twenty-one years ; and desire the said I. D. to take upon him the trouble for the good of my said son.

*Appointment of a Chaplain.*

**Appointment.** Know all men by these presents, that I, the Right Hon., &c., have admitted, constituted, and appoint-

\* This appointment must be attested by two witnesses ; (*Vaughan*, 177 ; 7 Ves. 348.) By 12 Car. II. c. 24, the father is empowered, by deed or will, to appoint a guardian for his infant children, whose power continues till the age of twenty-one, or any less time the father may appoint. Whereas the guardianship of the mother, (the guardian by nurture,) or the guardian in socage, ceased upon the ward attaining the age of fourteen years. If the father is dead without having appointed a guardian, and the infant (by reason of not having by descent the legal estate of any socage lands,—of which tenure almost all freehold lands now are,—and the death of his mother) has no guardian in socage or by nurture, he may, if of the age of seven years, appoint a guardian, whose office continues till twenty-one, unless, in the case of a female, it is determined by her previous marriage. (*Harg. C. Litt.* 88, b. n. 13, &c. ; *Mendes v. Mendes*, 3 Atk. 624, 1 Vez. 89 ; *Rex v. Toddington*, 1 B. and Ald. 560.)

\* A chaplain must be retained by instrument under *hand and seal*, to become a chaplain within the statute ; an appointment by word only is not sufficient. (4 Rep. 90.)

ed, and by these presents do, &c., the Rev. A. B., of, &c., to be my domestic chaplain, to perform divine offices within my house or chapel, and to have, hold, and enjoy all and singular the benefits, liberties, privileges, advantages, and emoluments due, and of right granted, to the chaplains of nobility by the laws and statutes of this realm. In witness, &c.

*Appointment of a Parish-Clerk.*

Know all men by these presents, that I, C. R. C., clerk, Recital of vacancy. rector of the parish of S., in the county of L., have nominated, ordained, and appointed, and by these Appointment. presents do nominate, ordain, and appoint to be the parish-clerk of the parish church of S., and in the room, stead, and place of A. B., deceased, the late clerk thereof, and the said office to have and execute by himself, his deputy, or deputies, for and during the term of his natural life, and during the same time to have, perceive, receive, and take all such wages, fees, dues, duties, profits, and emoluments as belong, and are, and shall be due to the said office, and of right ought to belong to the same, in as large and ample a manner as the said A. B., or any of his predecessors, clerks of the said parish of S., have had, or ought to have had, as due and accustomed to the parish-clerk. In witness whereof, I, the said C. R. C., have to these presents set my hand and seal, the      day of      in the year of our Lord .<sup>t</sup>

<sup>t</sup> The parish-clerk is regarded by the common law as a person having a *freehold* in his office, and, therefore, though he may be punished, yet he cannot be deprived by ecclesiastical censures; but for misdemeaning himself in his office, he may be punished in the ecclesiastical court by excommunication, but not by deprivation; Gaudye's case, (2 *Broun.* 38.) The parish-clerk is generally appointed by the incumbent, but by custom may be chosen by the inhabitants; and if such custom prevails, it is considered as a *temporal* or *civil* right in the parish; and the archdeacon is compellable by *mandamus* to confirm the object of their choice by swearing him into office; *Orme v. Pemberton*, Cro. Car. 589; 2 *Rol. Abr.* 234 and 286.

*Appointment of a Gamekeeper.<sup>a</sup>*

Know all men by these presents, that I, A. B., of &c., do hereby authorize, appoint, constitute, and empower C. D., of, &c., to be gamekeeper of in and to my said manor of , and all the royalties, rights, members, and appurtenances thereto belonging, during my pleasure, to keep and preserve the game within and upon the said manor, but not to kill or in any wise destroy or pursue the same, [(or) with full power, licence, and authority, within and upon my said manor, to kill any hare, pheasant, partridge, or any other game whatsoever, for my sole use and benefit, (or) for the use and benefit of ,] and also to take and seize all such guns, bows, greyhounds, setting-dogs, lurchers, or other dogs, ferrets, trammels, lowbells, hays, or other nets, hare-pipes, snares, or other engines, for the taking and killing of conies, hares, pheasants, partridges, or other game, as within the precincts of my said manor of shall be used by any person or persons, who, by law, are prohibited to keep or use the same; and I, the said do hereby authorize, appoint, constitute, and empower the said C. D. to seize, detain, and keep for my own use, all and every net, angle, leap, picche, and other engine, which he shall find used, or laid, or in the custody or possession of any person or persons whomsoever, fishing in any river or fishing whatsoever, within my said manor, without my consent; and further, I do hereby give and grant unto him, the said C. D., during my pleasure, full power and authority to do all and every other act and acts, thing and things, which I have power to authorize, and which are requisite and necessary for the preservation of the game within the said manor, and for the discovery and conviction of offenders in the destruction and pursuit of the same against the laws and statutes of this realm. In witness, &c.

<sup>a</sup> This is liable to a stamp of L.1, 15s. 55 Geo. III. cap. 184.

*A concise Form of an Appointment by Mortgagor of a Receiver of Rents, to secure Interest of Money advanced to him.*

This indenture, made, &c., between A. B., of, &c., <sup>Parties.</sup> of the first part, C. D., of, &c., of the second part, and E. F., of, &c., of the third part, [*recite the mortgage.*]<sup>\*</sup> And whereas the said A. B., for better securing the punctual payment of the interest of the said sum of L. , so long as the said sum, or any part thereof, shall remain due and owing unto the said C. D., upon or by virtue of the said recited security, hath agreed with the said C. D. to appoint the said E. F. receiver of the rents, issues, and profits of all and singular the said premises so granted and released to the said C. D. by the said recited indenture, as aforesaid. <sup>Recital.</sup>

Now, this indenture witnesseth, that, in pursuance of the said recited agreement, and in consideration of the premises, they, the said A. B. and C. D., (but as to the said A. B., at the request and by the direction of the said C. D., testified by his being a party to and executing these presents,) have, and each of them hath nominated, constituted, and appointed, and by these presents, &c., the said E. F., to be the receiver, agent, and attorney of them, the said A. B. and C. D., in their or his names or name and stead, to ask, demand, collect, and receive all and every the rents and profits whatsoever of or arising from [the said , hereby or intended so to be,] or all, &c., and from the present and future tenants and occupiers thereof, or other the person or persons liable to the payment thereof, as and when the same shall from

<sup>\*</sup> If the receiver be appointed for better securing an annuity, recite the annuity-deed as to the grant of the annuity; "and that for the better securing the same, the said grantor, at the request, &c., did grant and release unto, &c., to hold, &c., upon certain trusts therein declared concerning the same."

time to time become due and payable ; and, in case of the non-payment thereof, or of any part thereof, to take and use such lawful remedies for recovering and obtaining payment of the said rents and profits, or any part thereof respectively, by action, suit, distress, or otherwise, as the said E. F. shall think necessary or proper ; and also to perform and execute all other matters and things needful and requisite for collecting and receiving the said rents and profits, as fully and effectually, to all intents and purposes whatsoever, as the said A. B. and C. D., or either of them, might or could do in their or his proper persons or person ; and the said A. B. and C. D. do hereby order and direct all the present and future tenants and occupiers of the said , or other the persons or person liable thereto, to pay unto the said E. F. all the rents, issues, and profits thereof, for the purpose hereinafter expressed. And it is hereby agreed and declared, that the receipts of the said E. F. shall be good and sufficient discharges to such tenants or occupiers, or other person or persons, for such rents, issues, and profits, as they shall respectively pay to him. And it is hereby also agreed and declared, that all the rents, issues, and profits, which shall be received by the said E. F., shall be held upon and for the trusts, intents, and purposes hereinafter mentioned ; (that is to say,) upon trust, in the first place, to pay and discharge thereout all the costs and expenses which he may from time to time incur or be put unto, in, or about the collecting, receiving, and recovering the said rents, issues, and profits, or otherwise, in the execution of the trusts, powers, and authorities hereby in him reposed ; and, in the next place, to deduct and retain for his own use, as a compensation and satisfaction for his care, pains, and trouble, in or about the premises, such sum or sums of money as shall be equal to L. for every L.100 received ; and, in the next place, pay the costs, charges, and expenses of keeping the said messuages and premises in good repair and condition, [and so insured against fire as

aforesaid;] and, in the next place, pay to the said A. B., his executors, administrators, or assigns, the interest from time to time to grow due upon the said sum of L. , so secured as aforesaid; and, lastly, do and shall pay to the said [mortgagor,] his heirs, executors, administrators, or assigns, the clear surplus and residue of the rents and profits which shall from time to time remain after the said several payments shall be made thereout as aforesaid; and the said E. F. doth hereby; for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said A. B., his [executors, administrators,] and assigns, and also with and to the said C. D., his executors, administrators, and assigns, in manner following; that is to say, that he, the said E. F., shall and will, from time to time, so long as he shall continue to be such receiver as aforesaid of the said rents, issues, and profits, use his utmost endeavours fully to collect, get in, and receive the same; and that the said E. F. shall and will, during such time, and so long as he shall continue to be such receiver of the said rents, issues, and profits as aforesaid, truly and punctually pay and apply, or cause to be paid and applied, the same or such part thereof as shall be received by him in manner and for the purposes hereinbefore mentioned. Provided always, and it is hereby agreed and declared, that the said C. D., his executors, administrators, and assigns, shall not in any wise be answerable or accountable for any loss that may be occasioned by reason of any default or neglect of the said E. F., or for any misapplication or non-application by the said E. F. of the said rents, issues, and profits, or any part thereof respectively, but that such loss, misapplication, or non-application, and the salary or per centage of the said E. F., shall be wholly borne and paid by the said A. B., his executors, administrators, and assigns. Provided also, and it is hereby agreed and declared, that the said E. F. shall not act as such receiver or otherwise in the execution of the hereinbefore mentioned trusts or powers

until some one half-yearly payment of the interest of the said sum shall be in arrear for the space of one calendar month, and also that the powers and authorities hereby given to the said E. F. shall not prevent the said C. D., his executors, administrators, or assigns, from using or exercising all or any of the powers or remedies hereinbefore [or by the said recited indenture] given, limited, or reserved to him or them. In witness, &c.

## CHAPTER XL

### APPRENTICESHIP.

#### *Apprenticeship Indentures, (to a Trade.)*

THIS indenture, made, &c., witnesseth, that S. J., by <sup>Witnessing</sup> and with the consent and approbation of his father <sup>part.</sup> the said D. J., testified by his executing these presents, hath put, placed, and bound, and by these presents doth put, place, and bind himself apprentice to the said J. A., to be taught in the [*science,*] trade, [*or business,*] of            in all its branches, which the said J. A. now useth and followeth, or shall use or practise, and with him as an apprentice to serve from the day of the date thereof, for and during and unto the full end and term of (*seven years*) from thence <sup>Term.</sup> next ensuing, and fully to be complete and ended; during all which said time the said apprentice his said master well and faithfully shall serve, his secrets keep, his lawful commands every where gladly do; hurt to his said master he shall not do, nor willingly suffer to be done by others, but the same to his power shall let or forthwith give notice thereof to his said master; the goods, moneys, or effects of his said master he shall not embezzle or waste, nor lend them without his consent to any; at cards, dice, or any other unlawful games he shall not play; taverns and ale-houses he shall not haunt or frequent; fornication he shall not commit; matrimony he shall not contract; from the



Considera-  
tion.

service of his said master he shall not at any time depart or absent himself without his said master's leave ; but in all things as a good and faithful apprentice shall and will demean and behave himself towards his said master and all his during the said term. And the said [*master,*] for the considerations aforesaid, and of the sum of £. of lawful money of Great

Meat and  
drink.

Britain to him in hand well and truly paid by the said D. J., the receipt whereof he does hereby admit and acknowledge, doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said D. J., and also with and to the said S. J., and each of them, and each of their executors and administrators, that he, the said J. A., his said apprentice the said trade or business of as aforesaid, with all things thereto belonging, shall and will teach and instruct, or otherwise cause to be taught and instructed, for and during the said term ; *and shall and will also find and allow unto the said apprentice fit and sufficient meat, drink, washing, and lodging, during the said term ;* and the said D. J. doth hereby. for himself, his heirs, executors, and administrators, covenant and agree with the said J. A., his executors and administrators, that he, the said D. J., shall and will find and provide his said son S. J. with all proper and necessary clothes, and all other necessities except his board and lodging. And it is hereby declared and agreed by and between the said parties to these presents, that in case the said J. A. shall happen to die within

In case of  
death.

years from the date hereof, the executors or administrators of the said J. A. shall and will pay or refund unto the said D. J., his executors or administrators, the sum of twenty pounds, out of the said sum of sixty pounds. *And for the true performance of all and every the covenants, provisions, and agreements, matters and things herein contained, the said parties hereto bind themselves, and each binds himself to the other, in the sum of one hundred pounds.* In witness, &c.

Penal clause.

*Articles of Apprenticeship, (special Form.)*

Articles of agreement, *indented*,<sup>\*</sup> made, and concluded upon this            day of           , &c., between A. B., (*master*,) of, &c., of the first part, C. D., (*father*,) of, &c., of the second part, and E. F., (*apprentice*,) of, &c., son of the said C. D., of the third part, as follows: (that is to say,) the said A. B., in consideration of the sum of L.           , of lawful money of, &c., to him in hand well and truly paid by the said C. D., at or before, &c., the receipt, &c., and also in consideration of the service of the said E. F., to be done and performed to and for the said A. B., and of the covenants and agreements hereinafter entered into by the said C. D. and E. F., he, the said A. B., doth, at the instance of the said C. D., and by and with the consent of the said E. F., (*testified by his being a party to and signing these presents*,) agree to take and receive him, the said E. F., as his apprentice from the day of the date hereof, for and during the term of            years now next ensuing. And he, the said E. F., hath put and placed, and by these presents doth, by and with the consent of the said C. D., (*testified by his being a party to and signing and sealing these presents*,) put and place himself to and with the said A. B. to serve him as his apprentice from the date hereof, for the said term of            years; and doth hereby promise and engage, that during all the said time he, the said E. F., shall and will faithfully, diligently, and honestly serve him, the said A. B., and obey and perform his lawful commands, and shall not nor will absent himself from the service of his said master without his leave during the said term, nor unduly or negligently spend or waste any of his said master's moneys, effects, goods, or chattels, which shall be in

Consideration.

Apprentice binds himself with consent of parent.

And promises to serve.

<sup>\*</sup> This precedent may begin by way of indenture: thus, "This indenture, made, &c., between, &c., witnesseth, that in consideration," &c., (as above.)

And duly  
account.

And well de-  
mean himself.

Master cove-  
nants to in-  
struct.

And find  
meat, &c.  
Covenant by  
father for  
son's fidelity,  
&c.

the custody of or entrusted to him by the said A. B., or which shall be delivered or come to the hands of the said E. F., by the order or appointment of the said A. B., or in any other manner on his account, during the said term; but shall and will well, truly, and forthwith account for, deliver, and pay to the said A. B., his executors, administrators, or assigns, all and every such sum and sums of money, and other things, which he, the said E. F., shall receive, have, or be entrusted with, or which shall come to his hands or possession for or on account of his said master. And also shall and will in all things demean and behave himself as a good, true, and faithful apprentice during the said term in all other matters and things whatsoever. And the said A. B., in consideration of the premises, doth hereby covenant and agree to and with the said C. D., and also the said E. F. in the manner following: (that is to say,) that he, the said A. B., shall and will, during the said term of        years, use his best endeavours to teach and instruct, or cause to be taught and instructed, the said E. F., as his apprentice, in the said trade or business, [or profession,] of a        and in all things incident thereto. And also shall and will find and provide for him, the said E. F., good and sufficient meat, drink, and lodging, during the continuance of him, the said E. F., in the service of him, the said A. B.\* And, lastly, the said C. D. doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said A. B., his executors and administrators, that the said E. F. shall and will faithfully, diligently, and

\* If to a surgeon, add here: "And further, that he, the said A. B., shall and will permit and allow the said E. F., during the last two years of the said term, to resort to and attend, two days in every week, or oftener if requisite, the hospital of, &c., in and for his further and better instruction and improvement." See 55 Geo. III. cap. 194, and 6 Geo. IV. cap. 133, requiring a service of five years to an apothecary previous to being admitted for examination.

honestly serve the said A. B. as his apprentice during the said term. And further, that he, the said C. D., his executors or administrators, shall and will, at his own expense, find and provide, or cause to be found and provided, to and for the said E. F., good, proper, and sufficient clothes, washing, pocket-money, medicines, and medical attendance, and all other necessities (except as aforesaid) during the said term. And to find clothes, &c.

In witness, &c.

*An Assignment of Indentures of Apprenticeship.*

This indenture, made the, &c., between C. J., of, &c., Parties.  
 linen-draper, (executor of the last will and testament of D. R., late of the same place, haberdasher, deceased,) of the first part; C. D., of, &c., gent., and B. D. his son, of the second part; and P. T., of, &c., of the third part. Whereas the said B. D. did, of his own free will, by and with the advice and consent of the said C. D. his father, by certain indentures of apprenticeship, bearing date, &c., put and bind himself apprentice to the said D. R., to be taught and instructed in the art, trade, or business of a Recital of former articles.  
 which the said D. R. then used, and to serve the said D. R. after the manner of an apprentice from thenceforth, for and during and unto the full end and term of seven years from thence next ensuing, and fully to be complete and ended. And whereas the said D. R. departed this life on or about the, &c., having first duly made and published his last will and testament in writing, and thereby appointed the said C. J. sole executor thereof. And whereas the said B. D., at the time of the death of his said master, had served four years and upwards of his said term of seven years. Now, this indenture witnesseth, that, in order that the said B. D. may serve out the remainder and full term of his said apprenticeship, and be fully taught in the said art, trade, or business of a Recital of master's death, and of his will.  
 according to the purport and intent of the said recited indenture, he, the said C. J., at the request of the said B. D., and by and with the ad- Witnesseth.

Assignment. vice of the said C. D., his father, testified by their being parties to, and sealing and delivering these presents, hath, and by these presents doth fully and absolutely grant, assign, and set over unto the said P. T. all the right, title, interest, duty, service, term of years, and demand whatsoever, which he, the said C. J., hath, or can, or may lawfully have in or to the said B. D., under or by force or virtue of the said recited indenture of apprenticeship, as executor of the said D. R. deceased, or otherwise howsoever.

Covenant from assignee. And the said P. T. for himself, his executors, and administrators, doth hereby covenant, promise, and agree to and with the said C. D., his executors and administrators, that he, the said P. T., shall not only sufficiently teach and instruct, or cause to be taught and instructed, to the best of his abilities and skill, his said apprentice in the said art, trade, or business of a \_\_\_\_\_, which he now uses, but also shall and will find and provide for him meat, drink, washing, and lodging, meet and convenient for such apprentice, during all the said term of three years, residue and remainder of the term of seven years, as aforesaid. In witness, &c.

*Observations on Indentures of Apprenticeship.*

The instrument by which the apprentice is bound must be indented;<sup>7</sup> and in order to the validity of such indenture, it is necessary where the apprentice is an infant,<sup>8</sup> that the term of apprenticeship should be for a period of seven years at the least, for if the term should be for a less period, the indenture would, under the statute of the 5th Elizabeth, be voidable by the parties to it.<sup>9</sup> No third person, however, can avoid the indenture on that ground, and a settlement

<sup>7</sup> 5 Eliz. c. 4, sec. 25, 43; *Smith v. Birch*, 1 Sess. Ca. 222; 1 Bott. 528; *R. v. Margrave*, 5 T. R. 153.

<sup>8</sup> *Smedley v. Gooden*, 3 M. and S. 189; *Guppy v. Jennings*, 1 Anst. 256; *Burnly v. Jennings*, 6 Esp. Rep. 8.

<sup>9</sup> *Gray v. Cookson*, 16 East, 13.

may, therefore, be gained by service under a binding for a less period.<sup>b</sup>

Except in the case of parish apprentices, the concurrence of the party bound is absolutely necessary, the father having no power to bind his children.<sup>c</sup>

The master cannot assign an apprentice against his will, and, indeed, strictly speaking, the contract of apprenticeship being a personal trust, an apprentice is not assignable or transmissible, and the apprenticeship is determinable by the death of either party; but nevertheless, if the apprentice serve the assignee or representative of his master with the consent of the parties, such service will be considered as a continuation of the original apprenticeship.<sup>d</sup>

Though the representatives of the master are not bound themselves to teach their testator's apprentice, and are not able to compel him to serve them if they should be capable of affording the proper instruction, yet unless they procure for him another master, or teach him themselves, they will be liable in damages for the non-performance by their testator of the covenants, which by his death he was prevented from fulfilling.<sup>e</sup>

By the *custom* of London, a freeman may turn over his apprentice to another freeman, and such master shall have the same benefit of the apprentice's covenant, and the apprentice of the covenants on the part of the master, as if they had been originally entered into with each other.

The master to whom he is assigned must rely upon the covenants entered into by the person on the behalf of the apprentice for his faithful service during

<sup>b</sup> 1 Burr. Sett. Cases, 91.

<sup>c</sup> R. v. Arnesly, 3 B. and A. 584; R. v. Ripon, 9 East, 295.

<sup>d</sup> Hob. 134; Bac. Abr. Master and Servant, E. 1 Bott. 584; 1 Salk. 66; Dougl. 71.

<sup>e</sup> Rex v. Peck, 1 Salk. 66; Rex v. Eakring, 1 Bott. 583; Baxter v. Burfeild, Id. 581.

the remainder of the term; but by the *custom* of London, the executors of the master are bound, in case of his death, to place the apprentice with another master, (1 Salk. 66.) It has been decided, that, for the purpose of gaining a settlement, the service under an assignment will suffice, (11 East, 95.)

Parish apprentices may be assigned by virtue of 32 Geo. III., cap. 57, sec. 7, (11 East, 97.)

## CHAPTER XII.

### ASSIGNMENTS.

#### *An Assignment of a Term to attend the Inheritance.*

THIS indenture, made, &c., between, &c.—[*Recite the instrument creating the term, and that by mesne assignments, &c., it became vested in the assignor, and recite the conveyance of the freehold since the last assignment, including the cotemporary conveyance or mortgage.*] And whereas it hath been agreed between the parties hereto, that the said        and premises should be assigned by the said A. B. unto the said G. H. for all the residue of the said term of five hundred years upon the trusts, intents, and purposes hereinafter declared. Now, this indenture witnesseth, that, in pursuance of the said recited agreement, and in consideration of the sum of five shillings by the said G. H. paid to the said A. B., the receipt whereof is hereby acknowledged, he, the said A. B., at the request, and by the direction of the said C. D., and on the nomination of the said E. F., testified by their severally executing these presents, hath bargained, sold, assigned, and transferred, and, &c., unto the said G. H., his executors, administrators, and assigns, all the said messuages, farms, lands, and premises hereinbefore described, [being part of the messuages, lands, and premises,] and comprised in, and demised by, the hereinbefore in part recited



indenture, being the hereditaments and premises comprised in and conveyed by the said in part recited indenture of lease and release, [*or if it is uncertain what part of the premises are subject to the term,*) all so many and such part of the hereditaments and premises described in, and conveyed by the hereinbefore in part recited indenture of lease and release, as were comprised in and demised by the also hereinbefore in part recited indenture of \_\_\_\_\_, and are now subject to the said term of five hundred years,] with their several rights, members, and appurtenances. And all the estate, right, title, interest, trust, term, and terms of years, property, possession, benefit, claim, and demand whatsoever, both at law and in equity, of him, the said A. B., of, in, or to the same, or any part thereof respectively. To have and to hold the said \_\_\_\_\_, and all and singular other the premises hereby assigned, or intended so to be, with their appurtenances, unto the said G. H., his executors, administrators, and assigns, henceforth for all the rest and remainder of the said term of five hundred years now to come and unexpired, and for all other the estate, term, and interest of the said A. B. therein. In trust, nevertheless, for the said E. F., his executors, administrators, and assigns, for the further, better, and more effectually securing the payment of the principal, interest, and other moneys intended to be hereby secured, and to permit and suffer the same term, from time to time, to be assigned and disposed of for that purpose, as he, the said E. F., his executors, administrators, or assigns, shall from time to time direct or appoint, and in the meantime and subject thereto. In trust, and to the end and intent, that the same term may attend and wait upon the freehold reversion and inheritance of the said hereditaments and premises intended to be hereby assigned, in order to protect the same from all mesne and intervening incumbrances, if any such there be, and to be from time to time subservient to the uses, trusts, interests, and purposes, in and by the

said recited indenture of release, limited, expressed, and declared, of and concerning the same.

*Assignment of a Term by Indorsement, on a Purchase of the Inheritance by the Owner of the Term.*

This indenture, made, &c., between the within named A. B. of the one part, and C. D., of, &c., of the other part. [*Recite the contract for the purchase.*] And whereas by certain indentures of lease and release, already prepared and made between, &c., the messuage, lands, and premises, within mentioned and described, are intended to be conveyed and assured by the said                    unto the said A. B., his heirs and assigns for ever. And whereas, in order to prevent the within mentioned term of five hundred years now subsisting in the said premises from being merged in the reversion and inheritance thereof, it hath been agreed, that, previous to the execution of the hereinbefore mentioned indentures, the said messuages and premises shall be assigned by the said A. B. to the said C. D. for all the residue of the said term of five hundred years, for the purposes herein-after mentioned. Now, this indenture witnesseth, that, in pursuance of the said purpose and agreement, and in consideration of five shillings, &c., he, the said A. B., hath bargained, sold, assigned, and transferred, and, &c., unto the said C. D., his executors, administrators, and assigns, all the within described messuages, lands, and premises, with their several rights, members, and appurtenances. And all the estate, &c. [*Habendum as in last precedent covenant by A. B., that he has not incumbered.*]

*Assignment of several Terms.*

This indenture, &c. [*Recite the creation of the oldest term, and trace it as in an assignment of a single term to the present trustee, and do the same as to the second, third, and each other term successively ; then recite the title to the freehold from the period*

*when the term, which at the greatest distance of time was assigned to attend the inheritance was so assigned, and then recite the agreement to assign.*] Now, this indenture witnesseth, that, in pursuance of the said recited agreement, and in consideration of the sum of five shillings by the said Q. R. to each of them, the said [‘A. B., E. F., and I. J.,] in hand well and truly paid, the receipt, &c., they, the said A. B., E. F., and I. J., at the request, and by the direction of the said M. W., and upon the nomination of the said O. P., testified by their severally executing these presents, and according to their several estates, terms, and interests therein, have, and each of them hath, bargained, sold, assigned, and transferred, &c., habendum for all the rest, residue, and remainder of the said several terms of 2000 years, 1000 years, and 500 years now to come and unexpired, and for all other the estate, term, and interest of them, the said A. B., E. F., and I. J. therein, but upon the trusts, intents, and purposes hereinafter expressed, declared, and contained, of and concerning the same, [*add covenant against incumbrances commencing as follows;*] and the said A. B. doth hereby for himself, his executors, and administrators, and as to and concerning his own acts and defaults, and in respect only of the said term of 2000 years, and the premises therein comprised, and the said E. F., &c., covenant and declare with and to the said Q. R., his executors, administrators, and assigns, that they, the said A. B., E. F., and I. J., &c. [*By another witnessing part the trustees of the second, fourth, and sixth terms must assign them to S. T., and covenant with him against incumbrances.*] And it is hereby agreed and declared, between and by the said parties hereto, that they, the said Q. R. and S. T. respectively, and their respective executors, administrators, and assigns, shall and do henceforth stand possessed of, and interested in, the said messuages, lands, and pre-

‘ Trustees of the 1st, 3d, and 5th terms.

mises, for the respective residues of the said several terms of years so hereby assigned to them as aforesaid. Upon trust, &c.

*Observations on Deeds of Assignment of attendant Terms.*

In the recital of a term long since created for raising portions, and the trusts of which have been performed or become unnecessary, the trusts may be referred to briefly, thus, "upon certain trusts therein declared, and since performed and satisfied or discharged, or become incapable of taking effect," (as the fact is.) In old terms, it will be sufficient to recite the original creation of the term, and that the reversion, freehold, and inheritance of the premises therein comprised, have become vested in the (vendor,) and that by virtue of divers mesne assignments, &c., the term has become vested in the trustee to attend. If the term be assigned on a mortgage, recite, "that, upon the treaty for the loan of the said sum of L. , it was agreed by and between the parties hereto, that the said term of, &c., and the premises therein comprised, should be assigned by the said (trustee of the term) to the said (trustee for the mortgage,) for better securing the payment to the said (mortgagor,) his executors, administrators, and assigns, of the said sum of L. , and interest, according to the covenant for payment thereof, contained in the said recited indenture of release," (the mortgage.) If the term was created for raising portions which have not been raised, but which, on a sale, the premises are intended to be released from, it would be advisable that the parties entitled thereto beneficially should join in the assignment of the term to a trustee of the purchaser, for the purpose of assenting to the assignment, and releasing the premises from their claims.

The mode of stating trusts of old terms for raising portions, &c.

Short mode of showing the creation of a term, and in whom the inheritance has become vested, and the last assignment of the term.

The assignment of terms may be shortened very considerably, by indorsement on the last assignment, by which means the recitals will commence with the Assignment of terms by indorsement.

transactions which have taken place in regard to the inheritance since the execution of that deed; and such assignment may be effected by way of deed-poll, or indenture; but they should in general not be assigned in the conveyance of the fee, for the owner of the fee would thereby be precluded from recovering in ejectment on his own demise, for the production of the conveyance to himself would show that the legal estate was vested in another.

As to the merger of one term in another which is reversionary.

As one term will merge in another which is immediately reversionary to it,<sup>a</sup> even though it should be for a longer duration of time than such reversionary one, it is the practice, when a number of terms in the same estate are to be assigned, to assign them alternately to two trustees; one trustee takes the first, third, and fifth, &c., according to the priority of their creation, and the other trustee the second, fourth, sixth, &c.<sup>b</sup> By these means none of the terms vested in either of the trustees are immediately reversionary to any of the others vested in the same trustee, which, so long as the terms are subsisting, prevents the merger, and by this plan two trustees are sufficient for any number of terms. (See Notes to Morley, Coote, and Coventry's edition of Watk. Conv. p. 42—93. Butter's edition of Co. Litt. 208, a. n. 1, and cases there referred to. See mode of assignment, ante, p. 255.) In practice, it is the general rule for a purchaser or mortgagee to require an assignment or surrender of all terms, which have been previously assigned, to attend the inheritance, also of all outstanding terms, which have never been so assigned, as the doctrine of a presumed surrender is not to be relied on, and cannot be maintained against an actual assignment procured by another person. (Doe v. Hilder, 2 Barn. and Ald. 710; and see 6 Madd. 542; Brod. and Bing. 671.)

A purchaser for a valuable consideration can, by

<sup>a</sup> Hughes v. Robothan, Cro. Eliz. 302.

<sup>b</sup> 2 Preston Conv. 127, and 3 Id. 205.

having a term held in trust for him, protect himself from all titles and incumbrances, except specialty debts to the crown,<sup>1</sup> created since the commencement of the term of which he had not notice at the time he purchased, and this protection he is entitled to, though he may had notice at the time he procured the assignment of the term.<sup>2</sup>

By neglecting to procure the assignment of a term, a purchaser not only loses the benefit of its protection, but may find it—in the hands of another, who has taken advantage of his neglect—a formidable weapon against his own title.<sup>1</sup>

Though in general a purchaser cannot avail himself of a term as a protection against an incumbrance of which he had notice at the time he purchased, yet this rule is not applicable to dower for a purchaser, notwithstanding he had notice of the marriage at the time he purchased, may defend himself by a term against the widow's claims.<sup>m</sup> A mortgagee, or party claiming under a marriage settlement, as well as a purchaser in the common sense of the word, are entitled to the protection of a term; but a volunteer, though he must prevail at law, would not be permitted in equity to set up a term against a purchaser for value.<sup>n</sup>

A declaration of trust is sometimes with a view to avoiding some little expense, adopted instead of an assignment; but such a plan can never be recommended; for, if the trustee should be so inclined, he might, notwithstanding such declaration of trust, make a valid legal assignment of the term, to

<sup>1</sup> *The King v. Smith*, Sugd. V. and P. App. xvii.

<sup>2</sup> *Goodtitle v. Jones*, 7 T. R. 43; *Maundrell v. Maundrell*, 10 Ves. 271.

<sup>1</sup> *Goodtitle v. Morgan*, 1 T. R. 755.

<sup>m</sup> *Maundrell v. Maundrell*, 10 Ves. 270; *Mole v. Smith*, 1 Jac. and Walk. 665.

<sup>n</sup> *Bond v. Hopkins*, 1 Sch. and Lef. 429; *White v. Sansome*, 3 Atk. 412; *Pulvertoft v. Pulvertoft*, 18 Ves. 90; *Buckle v. Mitchell*, *idem*, 110.

a person claiming an adverse title, who, if he had no notice, could avail himself of it, but where the term is assigned to a trustee, he cannot make out his title to it without producing the assignment to himself, which would at once show that he was a trustee, and thereby destroy the equitable title of his assignee.

*Assignment of a Leasehold for years.*

This indenture, made, &c., between, &c.

*[Recite the instrument creating the term, setting out the parcels fully, and also the several assignments if not numerous, otherwise, that by divers mesne assignments, &c., and ultimately by the last assignment the term became vested in the assignor, and recite the contract for purchase.]* Now, this indenture witnesseth, that, in pursuance of the said agreement, and in consideration, &c., he, the said , hath granted, sold, assigned, and transferred, and by these presents doth, &c., all and singular the said messuage, lands, and premises hereinbefore described,<sup>o</sup> and which premises are now in the occupation of , and all other the premises comprised in and demised by the hereinbefore in part recited indenture, of and all and singular the rights, members, and appurtenances to the said premises, or any part thereof belonging or appertaining, and all the estate, right, title, interest, benefit, claim, and demand whatsoever, both at law and in equity, of him the said [assignor] in, to, and out of the said premises, and every part thereof, to have and to hold the said messuage, lands, and other the premises hereby assigned, or intended so to be, unto the said his executors, administrators, and assigns henceforth, for all the residue and remainder, now to come and unexpired, of the said term of

<sup>o</sup> Where the term is created by a will or other instrument, in which the parcels are not set out fully, then the parcels must be described here.

years, granted by the hereinbefore in part recited indenture, of the                      day of                      as aforesaid, and for all other the estate, term, and interest of him, the said [assignor,] in the said premises, or any part thereof, subject, nevertheless, to the payment of the rent, and the observance and performance of the covenants, conditions, and agreements reserved and contained in and by the said last mentioned indenture, and which, on the part of the lessee, his executors, administrators, or assigns, ought henceforth to be paid, observed, and performed. [*Add covenants on the part of the assignor that the lease is valid, that he hath power to assign, for quiet enjoyment, free from incumbrance, and for further assurance, and a covenant by the assignee, that he will pay the rent and perform the covenants.*]<sup>p</sup> In witness, &c.

### Variations.

If in the assignment of a lease a policy of insurance be included, the same may be recited, and in the testatum part, immediately after the parcels, say, "and the said policy of insurance;" and in the habendum of the premises for the residue of the term, say, "together with all benefit and advantage to accrue from the said policy of insurance;" and if fixtures are assigned, the same may be done at the end of the covenants, with another witnessing part, after reciting, "that the said fixtures and things mentioned in the schedule hereunder written, have been agreed to be taken to by the said" [assignee,] then assign all and singular the fixtures, matters, and things mentioned and set forth in the schedule thereunder written, to hold unto the said [assignee,] his executors, administrators, and assigns, for his and their own proper goods and effects.

When a policy is assigned in the same deed.

When fixtures are assigned.

<sup>p</sup> This covenant cannot be required by assignees of a bankrupt; *Wilkins v. Fry*, 1 Mer. 244; nor, it would seem, on any assignment subsequent to that by such assignees.



*Observations on the Assignment of long Leaseholds.*

It should be seen that the original lease is valid, and that there has been a regular series of legal assignments, or other transmissions; that the administrations and probates have been granted by the proper court, and that the purchaser can have the possession of the original deed creating the term, or that he can avail himself of it whenever he may have occasion for its production. A bond may be given by the assignee for payment of the rent and performance of the covenants, or the assignor should have a counterpart of the assignment. In tracing a line of representation it should be remembered, that the administrator of an executor, or the executor of an administrator, does not represent the original testator or intestate, the intervention of an administration destroying the power of transmission of the representative character, and making necessary the grant of an administration *de bonis non*. Upon the death of one of several executors, the representative character does not devolve upon his representatives, but vests solely in the survivors, even though they should not have proved; but if the survivor dies without having proved, his executor will not represent the original testator, and an administration of the goods unadministered, or *de bonis non*, as it is generally called, must be taken out.

ASSIGNMENTS OF CHoses IN ACTION.

*An Assignment of a Debt.*

Parties.

Recital.

This indenture, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. Whereas, E. F., of, &c., is indebted unto the said A. B. in the sum of, &c., for, &c. And whereas the said A. B. hath agreed with the said C. D. to assign

to him the said debt, in consideration of the sum of, &c. Now, THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration, &c., the receipt, &c., he, the said A. B., hath bargained, sold, assigned, transferred, and set over, and by these presents doth, &c., unto the said C. D., his executors, administrators, and assigns, all that the said debt or sum of L.      so now due and owing unto him the said A. B. by the said E. F., and all the estate, right, title, interest, claim, and demand whatsoever, both at law and in equity, of him the said A. B., of, in, or to the same or any part thereof; to have, hold, receive, and take the said debt or sum of, &c., and other the premises hereby assigned, or mentioned, or intended so to be, unto and by him the said C. D., his executors, administrators, and assigns, to and for his and their own proper use and benefit.<sup>a</sup> And for the better and more effectually enabling the said C. D., his executors, administrators, and assigns, to enforce the payment of, and receive the said assigned premises, he, the said A. B., hath made, deputed, constituted, and appointed, and by these presents doth irrevocably make, depute, constitute, and appoint the said C. D., his executors, administrators, and assigns, his true and lawful attorney and attorneys, for him, the said A. B., and in his name, and in the name or names of his executors or administrators, but for the sole and proper use and benefit of the said C. D., his execu-

Operative  
part.

Letter of at-  
torney.  
(Debt.)

<sup>a</sup> The habendum, with a short power of attorney in regard to any personalty, may run thus: "To have and to hold, &c., together with full power and authority, (which the said A. B. doth hereby give and grant to and for the said C. D., his executors, administrators, and assigns,) in the name of the said A. B., to ask, demand, sue for, recover, receive, sign, and give full and absolute acquittances and discharges in writing for the said, &c., and other the premises hereby assigned, as and when the same shall become due or payable."

(Debt.)

tors, administrators, and assigns, to demand, sue for, recover, and receive from the said E. F., and all and every other the person or persons to whom it shall and may belong to pay the same, the said debt or sum of L. , together with all and every the sum and sums of money from time to time to grow due or be payable in respect thereof; and upon non-payment thereof, to use and take all such lawful and equitable ways and means for obtaining or recovering the same, as shall be deemed necessary or expedient in that behalf; and on payment thereof, to give sufficient releases and discharges for the money due thereon: and one or more attorney or attorneys, under him the said C. D., his executors, administrators, or assigns, for any of the purposes aforesaid, to nominate, substitute, or appoint, and from time to time to remove and displace, as he or they shall think fit; he the said A. B. hereby transferring and giving unto the said C. D., his executors, administrators, and assigns, his full and whole power and authority in the premises to every intent and purpose, and ratifying and confirming, and promising and agreeing to ratify and confirm, all and whatsoever he or they shall lawfully do, or cause to be done in or about the premises, by virtue of these presents. And the said A. B., for himself, his heirs, executors, and administrators, doth hereby covenant, promise, declare, and agree, with and to the said C. D., his executors, administrators, and assigns, in manner following; (that is to say,) that for and notwithstanding any act, deed, matter, or thing whatsoever, by him the said A. B. made, done, committed, or suffered to the contrary, the said debt or sum of L. is still due and owing to him the said A. B.; and that for and notwithstanding any such act, deed, matter, or thing, as aforesaid, he, the said A. B., at the time of the sealing and delivery of these presents, hath in himself good right, and full and lawful power and authority to assign

Covenant by  
assignor  
that the debt  
is subsisting.

Good right to  
assign.

and transfer the said debt or sum of L.      and pre- (Debt.)  
 mises unto the said C. D., his executors, administra-  
 tors, and assigns, in the manner aforesaid, and ac-  
 cording to the true intent and meaning of these pre-  
 sents. And that he, the said A. B., his executors or Will not re-  
 administrators, shall not, nor will at any time here- ceive the debt.  
 after, revoke, annul, or make void the aforesaid  
 power or authority hereby given to the said C. D.,  
 his executors, administrators, and assigns, or receive  
 the said debt or sum of L.      , or any part thereof,  
 or make, do, execute, or knowingly occasion or suf-  
 fer any act, deed, matter, or thing whatsoever,  
 whereby, or by means, or in consequence whereof,  
 the said C. D., his executors, administrators, or as-  
 signs, shall or may be prevented or hindered from  
 recovering, enforcing payment of, or receiving the  
 same, or any part thereof. And also, that he, the Further as-  
 said A. B., his executors and administrators, shall surance. -  
 and will, at any time or times hereafter, at the re-  
 quest and expense of the said C. D., his executors,  
 administrators, and assigns, do and execute all such  
 further and other lawful and reasonable acts, deeds,  
 matters, assignments, and things whatsoever, not  
 only for the better and more effectually and satisfac-  
 torily assigning the said debt or sum of L.      unto the  
 said C. D., his executors, administrators, and assigns,  
 but also for assigning the same unto any other per-  
 son or persons whomsoever, and enabling the said C.  
 D., his executors, administrators, and assigns, or  
 such person or persons, to recover and receive the  
 same, to and for his and their own proper use and  
 benefit, or otherwise, as by him or them, or his or  
 their counsel in the law, shall be reasonably advised  
 or required. And the said C. D. doth hereby for Covenant by  
 himself, his heirs, executors, and administrators, co- assignee to  
 venant, promise, and agree with and to the said A. indemnify  
 B., his executors, administrators, and assigns, in man- assignor.  
 ner following; (that is to say,) that he, the said C.  
 D., his executors, administrators, and assigns, shall  
 and will, from time to time, and at all times here-

(Debt.) after, save, defend, keep harmless, and indemnified, the said A. B., his heirs, executors, and administrators, of, from, and against all costs, charges, damages, and expenses whatsoever, which shall or may be recovered against, or in any manner become payable by the said A. B., his executors or administrators, for or by reason or means of any action, suit, or other legal or equitable proceeding, which shall or may be brought or prosecuted by him, the said C. D., his executors, administrators, or assigns, in the name or names of him, the said A. B., his executors or administrators, by virtue of these presents, or of any power or authority herein contained.

In witness, &c.

(Bond.) *Assignment of a Bond, (with Instructions as to Variations.)*

Parties. This indenture, made, &c., between A. B., (assignor,) of the one part, and C. D., (assignee,) of the other part. [Recite the bond, of whatever description it may be, and if a judgment be obtained by a warrant of attorney, recite the same; or, if judgment was obtained, in an action of debt upon the bond, recite it as such: for forms, see Recitals.] And whereas there remains due to the said A. B. the sum of, &c., for principal and interest on the said bond; and whereas the said A. B., in consideration of the sum of, &c., hath agreed to assign the said recited bond and all principal and interest moneys thereby secured. Now, &c., that in pursuance of the said agreement, and in consideration of the sum of, &c., in hand well and truly paid by the said C. D., at, &c., the receipt, &c., he, the said A. B., hath bargained, sold, assigned, transferred, and set over, and by these presents doth, &c., all that the hereinbefore recited bond or obligation of the said (obligor,) and also all that the penal sum, and also all benefit and advantages whatsoever to be had or derived thereupon. [If the assignment be of a judgment recovered on the bond, say, "all that the said bond or obligation of the said (obligor.)

Recitals.

If a judgment was obtained.

Operative part.

Assignment of bond.

If a judgment.

together with the judgment recovered thereon as (Bond.)  
 aforesaid, and all benefit and advantage to be had or  
 derived therefrom, or from any process, extent, or  
 other executions or execution to be thereupon had,  
 sued out, or executed ;] and all the right, title, in- Habendum.  
 terest, &c., to have and to hold the said bond or  
 obligation, penal sum, and other the premises hereby  
 assigned, or intended so to be, unto the said C.  
 D., his executors, administrators, and assigns, to  
 and for his and their own proper use and benefit.  
 And for the better enabling, &c., to receive the Power of at-  
 moneys due, or to become due, on the said bond, he, torney.  
 the said A. B., hath made, &c. [*Add a power of  
 attorney, similar to the preceding precedent, (p. 263)  
 for recovering the money,*] upon or by virtue of the  
 said bond, and on payment thereof, to deliver up or  
 cancel the said bond, and to give sufficient releases  
 and discharges for the moneys due thereon, [*If the  
 bond be accompanied by a judgment, say,* "and to ac-  
 knowledge, or cause to be acknowledged, satisfaction  
 upon the said judgment;" and one or more, &c., to  
 appoint, &c. [*Then add covenants from A. B., that* Covenants  
*the said bond or obligation hereby assigned, or in-* that bond is  
*tended so to be, is still subsisting and in force; and* subsisting.  
*that the sum of, &c., thereby secured, as hereinbefore*  
*mentioned, is still due and owing to him, the said*  
*A. B. (If a judgment, recovered on the said bond,* If a judg-  
*be also assigned, the covenant will be,* "that the said ment.  
 bond or obligation and judgment hereby assigned, or  
 intended so to be, are still subsisting and in force,  
 and that the same, or either of them, or any execu-  
 tion or other remedy to be had or issued by virtue  
 thereof, are not in anywise defeated or prevented.")  
 And that the said A. B. hath power to assign and Power to  
 transfer the said bond or obligation, sum of money, assign.  
 and premises, unto, &c. And that the said A. B. Will not re-  
 will not receive the money, or prejudice the assign- ceive money.  
 ment. And for further assurance "for the better, Further as-  
 &c., assigning the said bond or obligation, and other surance.

(Bond.)

the premises aforesaid, unto," &c. *If the bond be accompanied by judgment, add, "and for confirming all actions, suits, executions, and other lawful proceedings whatever which shall or may be had, prosecuted, or sued out against the said (debtor,) his heirs, executors, or administrators, or his, or their, or any of their lands, tenements, goods, or chattels, in the name of him, the said A. B., upon or by virtue thereof;" then add the usual covenant of indemnity by the assignee to the assignor; for the form of which, and the foregoing covenant, see the preceding precedent, p. 262, which will be applicable, with slight variations, to whatever the nature of the bond, &c., may be that is intended to be assigned.]*

In witness, &c.

(Bond and  
warrant of  
attorney.)  
Parties.

*Assignment of a Bond and Warrant of Attorney  
prior to the day appointed for Payment.*

Recitals.

This indenture, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part [*Recite the bond and warrant of attorney, see Recitals.*] And whereas the said judgment has not yet been entered up in pursuance of the said warrant, but the said C. D. hath agreed to advance to the said A. B. the said principal sum secured by the said bond and warrant of attorney; and the judgment to be entered up thereon as hereinafter is mentioned. Now, &c., that for and in consideration of, &c., by, &c., to, &c., the receipt, &c., he, the said A. B., hath assigned, transferred, and set over, and by these presents doth, &c., all that the hereinbefore in part recited bond or obligation, and also the said warrant of attorney to enter up judgment thereon, together with the said judgment when so entered up, and all and every the principal and interest moneys now due, or to become due upon, or by virtue thereof, and all benefit, &c., to be had, &c., by virtue of the said bond, warrant of at-

Operative  
part.

torney, and judgment, or any or either of them, or (Bond and warrant of attorney.) any process, extent, or other execution to be there-upon had, sued out, or executed, and all the right, &c., of, in, or to the said bond, warrant of attorney, judgment, moneys, and premises, and every of them.

To have, hold, receive, take, and enjoy the said bond, *Habendum.* warrant of attorney, judgment, and all and singular the moneys and premises hereby assigned, or intended so to be, unto and by him, the said C. D., his executors, administrators, and assigns, from henceforth to and for his and their own use and benefit for ever. And for the better, &c. [*Add a power of attorney* *Power of attorney.* to receive the money, as in p. 263, "to demand and receive of and from the said (*obligor*,) his heirs, executors, or administrators, the said principal sum of, &c., and the interest thereof, as and when the same shall respectively become due and payable under and by virtue of the said bond, warrant of attorney, and judgment, or either of them, and all costs," &c.; and *Covenants.* with covenants that the bond and warrant of attorney is in full force, and that the assignor hath not received any part of the said moneys, nor will receive the same, nor revoke these presents; and for further assurance; and concluding with the covenant of indemnity by assignee to assignor against costs, &c.]"

In witness, &c.

*An Assignment of a Debt due upon a Judgment.* (Debt upon judgment.)

This indenture, made, &c., between, &c. [*Recite the judgment being obtained,* (see Recitals, p. 22,) *and the contract for the assignment,* p. 19.] Now, *Parties.* and the contract for the assignment, p. 19.] Now, *Operative part.* &c., in consideration of, &c., to, &c., he, the said assignor, hath bargained, sold, assigned, transferred, and set over, and by these presents doth, &c., all that the hereinbefore in part recited judgment, and all and every sum and sums of money whatsoever, now or hereafter to become due upon or by virtue thereof,

<sup>n</sup> See pp. 88, 101, 264.



(Debt upon  
judgment.)  
Habendum.

Power of  
attorney.

and to be had or arise from or by any execution to be issued or sued out thereupon, and all benefit, &c. To have and to hold the said judgment, and other the premises hereby, &c., unto the said (*assignee*.) his executors, administrators, and assigns, to and for his and their own use and benefit. And for the better enabling, &c., to enforce the payment of the said sum of, &c., due upon the said judgment, he, the said (*assignor*.) hath made, &c., and upon payment to acknowledge satisfaction upon record of the said judgment, and to make or give any other release, &c. [*Add the same covenants as in the preceding precedent.*] In witness, &c.

(Bond and  
judgment.)

Parties.

Recitals.

*Assignment of a Bond and Judgment by Husband and Wife, by way of Mortgage or Security.*

This indenture, made, &c., between A. B., of, &c., and M. his wife, (late M. C., spinster,) of the one part, and C. D., of, &c., of the other part. [*Recite the bond, and also the warrant of attorney, if any: see Recitals.*] And whereas default was made in payment of the said sum of, &c., and interest, on the day mentioned in the condition of the said in part recited bond. [*If a judgment was obtained upon the same, recite such judgment: see Recitals.*] And whereas the said A. B. intermarried with the said M. B. on, &c. And whereas the said A. B., having occasion for the sum of L. , hath requested the said C. D. to advance the same, and he hath agreed so to do, on having the said recited bond or obligation, together with the said judgment, assigned to him as a security for the repayment of the same. Now, &c., that in consideration of, &c., to the said A. B., and M. his wife, or one of them, in hand paid, &c., by, &c., the receipt, &c., he, the said A. B., and M. his wife, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do, &c., all that the hereinbefore recited bond, &c., sums of money, &c., together with the said judgment so recovered, &c., and all benefit, &c.; to have, &c., the

Operative  
part.

said judgment, &c., sums of money, &c., hereby, &c., (Bond and unto and for the only use and benefit of the said judgment.)  
 C. D., his executors, &c., in as full and ample man- Habendum.  
 ner, to all intents and purposes, as, &c. [*Then add* Proviso.  
*a proviso for making void the deed on payment of the money by a certain day, and that then the said C. D., his executors, &c., "will deliver up the said bond or obligation and judgment, and these presents are to be cancelled and made void," any thing to the contrary, &c.: see mortgage provisos.]*  
 And the said A. B., and M. his wife, do hereby con- Power of at-  
 stitute the said C. D. his and their, &c. [*Add a* torney.  
*power of attorney,\* also a covenant from A. B. and his wife for payment of the money, as in a mortgage; and that the bond is still subsisting, and for further assurance, as in the preceding precedent.]*  
 In witness, &c.

#### *Assignment of a Mortgage Bond by Indorsement.*

To all to whom, &c.

Whereas [*recite the amount due on the bond.*] Recitals.  
 Now, these presents witness, that the said A. B., in Operative  
 consideration of the premises, and to the intent that part.  
 the within-written bond may be assigned and kept on foot, and that the said C. D. may have the full benefit thereof, he, the said A. B., doth assign, transfer, and set over the within-written bond, and all sum and sums of money thereby secured, and now due or to become due and payable by virtue thereof, and all benefit and advantage whatsoever in respect to the same; and the said A. B. doth hereby authorize the Power of at-  
 said C. D., his, &c., in his name to ask, demand, sue torney.  
 for, recover, and receive all principal and interest money due and to become due by virtue of this bond, and to take all legal means for recovering and receiv-

\* This precedent may be framed in trust with the declaration, &c., as in p. 275.

ing, and also for discharging the same, as fully and effectually, to all intents and purposes whatsoever, as he, the said A. B., could or might have done, if these presents had not been made. In witness, &c.

(Dividends.) *An Assignment of Dividends under a Fiat of Bankruptcy.*

**Parties.** This indenture, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part.

**Recitals.** Whereas a fiat in bankruptcy, bearing date, &c., hath been awarded and issued against E. F., of, &c., under which he hath been duly adjudged a bankrupt. And whereas the said A. B. hath come in and proved a debt of, &c., under the said fiat, as due to him from the said E. F., but hath not yet received any dividend from the estate and effects of the said (*bankrupt*) in respect thereof. And whereas the said C. D. hath agreed with the said A. B. for the purchase and assignment of the dividends thereupon for the sum of, &c. Now, &c., in consideration, &c., he, the said A. B., hath bargained, sold, assigned, transferred, and set over, and, &c., all that the said debt or sum of, &c., so due to him, the said A. B., from the said (*bankrupt*), and proved under the said in part recited fiat, as hereinbefore is mentioned, and all and every the security and securities for the same, and all and every the sum and sums of money which shall or may be paid or payable by way of dividend upon, or in respect of, the same, under or by virtue of the said fiat, or otherwise howsoever, and all powers, remedies, and lawful means for the recovery thereof, and all the right, &c.; to have and to hold, receive, perceive, take, and enjoy all and every the said sum or sums of money, dividends, and premises hereinbefore assigned, or otherwise assured, or intended so to be, with the appurtenances, unto and by the said C. D., his executors, administrators, and assigns, to and for his and their own use and benefit. [*Add a power of attor-*

**Operative part.**

*ney and covenants by A. B. that he has not received, (Dividenda.)*  
*&c., and for further assurance, with a covenant of*  
*indemnity to A. B. by C. D., for which see p. 265.]*

In witness, &c.

*An Assignment of Debt and Dividends under a Fiat  
 of Bankruptcy, in trust, for securing Costs to an  
 Attorney.\**

This indenture, made, &c., between A. B., of, &c., Parties.  
 and C. D., of, &c., [*the attorney of A. B.*] Whereas Recital of  
 the said A. B. stands justly and truly indebted un- assignor  
 to the said C. D. in L. and upwards, on the being in-  
 balance of an account for moneys paid, laid out, and debted to as-  
 expended, and for business done and performed, and signee.  
 for journeys taken for and on the behalf of the said  
 A. B., and in the prosecution of suits at law and in  
 equity, and in the managing various matters on his  
 behalf. And whereas the said A. B. is not at pre- Not able to  
 sent able to pay the amount so now due and owing pay.  
 from him to the said C. D., as aforesaid, and the said  
 C. D., at the request of the said A. B., is about to  
 pay various sums of money, and incur considerable  
 expenses, for and on the behalf of the said A. B.,  
 which it will not be in the power of the said A. B.  
 for some time to come to repay. And whereas the Debt proved  
 said A. B., as one of the creditors of E. F., of, &c., under the  
 a bankrupt, hath proved a debt under the fiat now in fiat.  
 prosecution against him, the said E. F., to the amount  
 of L. , on which no dividend hath yet been  
 made. And whereas, in order to secure to the said Agreement to  
 C. D. the payment of the balance now due and ow- assign.  
 ing to him from the said A. B., with interest for  
 the same, and to afford a security for the due pay-  
 ment of any sums of money and expenses which  
 may be hereafter paid or incurred by him, for or  
 on account of the said A. B., he, the said A. B., hath

\* Attorneys cannot take securities from their clients for  
 future costs. *Jones v. Tripp*, Jac. 322; *Williams v. Pigott*,  
 Id. 598. *Ex parte Laing*, 2 Mont. and A 381.

(Dividends.) proposed and agreed to assign and make over to him, the said C. D., the said debt so as aforesaid proved by him against the estate of the said E. F., and all dividends which may be due or become payable on account thereof, upon the trusts and in manner hereinafter mentioned. Now, this indenture witnesseth, that, in pursuance of the said agreement, and in consideration of the premises, and in consideration of 10s. of, &c., by the said C. D. to the said A. B., at, &c., the receipt, &c., he, the said A. B., hath bargained, sold, assigned, transferred, and set over, and by these presents doth, &c., all that the said debt or sum of L. so as aforesaid due and owing to the said A. B. from the said E. F., and proved by him under the fiat of bankruptcy against the said E. F., as hereinbefore is mentioned, and also all and every other dividend and dividends, sum and sums of money, which shall or may be declared or become due and payable on account thereof respectively; and all the right, title, and interest of him, the said E. F., of, in, and to the same and every part thereof, and all powers and remedies for the recovering and enforcing payment of the same. To have, hold, receive, and take the said debt or sum, dividend or dividends, hereinbefore expressed to be hereby assigned, with all benefit and advantage thereof, and all power and remedies for recovering the same, unto the said C. D., his executors, administrators, and assigns, as and for his and their own moneys; upon the trusts, nevertheless, and for the purposes hereinafter expressed and declared, of and concerning the same. And for the better enabling him, the said C. D., his executors, administrators, and assigns, to receive the said sum and sums of money, hereinbefore expressed to be hereby assigned to him, the said A. B., doth hereby irrevocably make, nominate, constitute, and appoint the said C. D., his executors, administrators, and assigns, to be the true and lawful attorney and attorneys of him, the said A. B., to ask, demand, sue for, recover, and receive the said debt

Witnesseth.

The assignment.

Habendum.

Power of attorney.

or sum of L. , and all dividends whatsoever, which shall or may become payable in respect thereof; and on receipt thereof, or of any part thereof, to give any receipt or receipts, acquittances, releases, or discharges for the same, as the case shall require; and to bring, commence, and prosecute any action, suit, or other proceeding whatsoever, for recovering and compelling payment thereof. And also to adjust, settle, compound, and compromise all accounts, reckonings, matters, and things whatsoever relating to the said debt, dividends, and premises, or any of them; and for all and any of the purposes aforesaid to use the name of the said A.B., and generally to do, execute, and perform any other act, deed, matter, or thing whatsoever, relating to the premises, as fully, to all intents and purposes, as he, the said A. B., his executors, administrators, and assigns, could do, or might have done, if personally present, and these presents had not been made. And whatsoever, &c. And it is hereby declared and agreed, by and between the said parties hereto, that the assignment hereby made of the said debt, sum and sums of money, dividend and dividends, and the power hereinbefore given to the said C. D., his executors, administrators, and assigns, is so made and given to him and them, and that he and they shall and will receive, and stand possessed of, all sum and sums of money which may become payable on account of the said debt or sum, or the dividend or dividends thereof; upon the trusts, and for the purposes hereinafter mentioned, expressed, and declared, of and concerning the same; (that is to say,) upon trust, that he, the said C. D., his executors, administrators, and assigns, do and shall thereout retain and reimburse himself or themselves, all costs, charges, and expenses whatsoever, which he or they shall or may, from time to time, be put unto or sustain, in or about the execution of the trusts hereby reposed in him and them; and also the said debt or sum of

(Divi lends.)

Declaration  
of the trusts.To retain  
costs.And also his  
said debt of L.

(Dividends.) L. so as aforesaid now due and owing to him, the said C. D., from the said A. B., together with lawful interest for the same from the day of the date hereof. And, in the next place, do and shall, in like manner, retain and reimburse himself and themselves all sum and sums of money and expenses which he, the said C. D., may from time to time pay, be put unto, or incur, to, for, or on account of the said A. B.; and when and so soon as all such sum and sums of money shall have been fully paid off and discharged, then, upon this further trust, that he, the said C. D., his executors or administrators, shall and will stand possessed of all the residue of the moneys which shall have been, or shall thereafter be, received by virtue of these presents, for the benefit of the said C. D., his executors, administrators, or assigns, and shall and will pay over the same to him or them accordingly.

Covenants. *[Add a covenant from A. B., that he had done no act whereby his right to the said debt or sum and dividends were incumbered, and a covenant for better assuring, &c. See page 265.]* In witness, &c.

(Stock in the funds.) *An Assignment of Stock in the Funds, (bequeathed under a Will.)*

This indenture, made, &c., between (assignor,) of the one part, and (assignee,) of the other part.

Recital. *[Recites a will, whereby the stock is given to (assignor,) &c. Recites that all the debts and funeral and testamentary expenses of the said testator, and the legacies bequeathed by his said will, have been fully paid and satisfied out of his personal estate. And recites, that the said (assignor) is indebted unto the said (assignee) in the sum of L. ; and for securing the same, he hath agreed to assign unto the said (assignee) the said stocks, funds, and securities, in manner hereinafter mentioned.]*

Contract. Now, this indenture witnesseth, that, in pursuance of the said agreement, and for carrying the same into execution, and in consideration of the sum of five shillings by the said

Witnessing part.

(*assignee*) to the said (*assignor*) in hand paid, &c., (Stock in the the receipt, &c., he, the said (*assignor*), hath granted, funds.) bargained, sold, assigned, transferred, and set over, and by these presents doth, &c., unto the said assign- The stock assigned. nee, his executors, administrators, and assigns, all that the said sum of L. 3 per cent. consolidated bank annuities, now standing in the name of, &c., in the books of the Governor and Company of the Bank of England, or other the stocks, funds, and securities into or upon which the same is invested, and all the interest, dividends, and annual produce due and payable in respect thereof, or any part thereof respectively, and all the right, title, interest, possibility, property, claim, and demand whatsoever, both at law and in equity, of him the said (*assignor*), in, to, from, out of, or upon the same, and every part thereof. To have and to hold the said stock, funds, and securities, and all and singular other the premises hereinbefore assigned, or intended so to be, unto the said (*assignee*), his executors, administrators, and assigns. But nevertheless, upon and Habendum. The trusts. for the trusts, intents, and purposes hereinafter declared and contained, of and concerning the same ; (that is to say,) upon trust that the said (*assignee*), or his executors, administrators, and assigns, do and shall, as soon as conveniently may be, absolutely sell and dispose of the said stock, funds, and securities, or so much or such part or parts thereof as he or they shall think fit and sufficient, and do and shall apply and dispose of the money so to be raised as aforesaid in payment and satisfaction of all such costs, charges, and expenses as aforesaid, which the said (*assignee*) shall be put to in the execution of the trusts hereby declared ; and then, in the next place, in payment and satisfaction to him, the said (*assignee*), his executors, administrators, and assigns, of the said L. so due and owing as aforesaid, with interest for the same at the rate of, &c. And it is hereby agreed and declared, that, subject to the trusts hereinbefore mentioned con- Trusts of stock remaining undisposed of.



(Stock in the funds.)

Power of attorney.

Receipts of trustees to be a discharge.

cerning the same, the said (*assignee*) shall stand and be possessed of, and interested in, the said stock, funds, securities, and premises, or so much thereof as shall remain undisposed of after answering the purposes aforesaid, upon trust for the said (*assignor*,) his executors, administrators, and assigns, and to transfer and dispose of the same accordingly. And the said (*assignor*) doth hereby irrevocably make, nominate, constitute, and appoint, and in his place and stead put the said (*assignee*,) his executors, administrators, and assigns, to be the true and lawful attorney and attorneys of him, the said (*assignee*,) to ask, demand, sue for, recover, and receive of and from all and every the person and persons who are, is, or shall or may be liable to pay or transfer the same respectively, the said stock, funds, securities, and premises; and on non-payment or non-transfer of the same, or of any part thereof respectively, to bring, commence, carry on, and prosecute any action, suit, or other proceeding whatsoever, for recovering and compelling transfer thereof respectively; and also to adjust, settle, compound, and compromise all accounts, reckonings, transfers, matters, and things whatsoever, relating to the said stocks, funds, securities, and premises, or any of them, and for all or any of the purposes aforesaid, to use the name of the said (*assignor*,) and generally to do, execute, and perform any other act, deed, matter, or thing whatsoever, relating to the premises, as fully, to all intents and purposes whatsoever, as he, the said (*assignor*,) could do if personally present, in case these presents had not been executed; and whatsoever the said (*assignee*,) his executors, administrators, or assigns, shall lawfully do, or cause to be done, in or about the premises, the said (*assignor*) doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the (*assignee*,) his executors, administrators, and assigns, to allow, ratify, and confirm. And it is hereby agreed and declared, between and by the par-

ties to these presents, that the receipt or receipts in writing of the said (*assignee*,) his executors, administrators, or assigns, for any money payable to him or them, under or by virtue of these presents, shall be a good and sufficient discharge, or good and sufficient discharges for the same; and that the person or persons to whom such receipt or receipts shall be respectively given, shall not be answerable or accountable, or be in any wise bound to see to the application of the money in such receipt or receipts respectively acknowledged to be received, or to inquire into the necessity or regularity of any sale or sales which may be made by virtue of these presents. [Add a covenant from (*assignor*,) *that he had good right "to assign the money, stock, and premises hereby assigned, or intended so to be, under the said (*assignee*,) his executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents."*] And also, that he, the said (*assignor*,) shall not, nor will at any time or times hereafter, revoke, annul, or make void, the aforesaid power or authority given to the said (*assignee*,) his executors, administrators, and assigns, or make, do, or execute, or knowingly or willingly permit or suffer any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof, the said (*assignee*,) or his executors, administrators, or assigns, may, can, or shall be in any wise prevented or hindered from having, receiving, or taking the said premises, or any part thereof, upon and for the trusts, intents, and purposes aforesaid. And further, that (*assignor*,) his executors or administrators, shall and will, at any time or times hereafter, upon every reasonable request of the said (*assignee*,) his executors, administrators, or assigns, make, do, and execute, or cause or procure, &c., all such further and other lawful and reasonable acts, deeds, matters, and things, for the

(Stock in the funds.)

Covenants good right to assign.

Will not make void the power.

And for further assurance.

<sup>7</sup> See p. 264.

(Stock in the funds.)

better and more effectually assigning, assuring, and confirming of the said premises hereby assigned, or intended so to be, unto the said (*assignee*,) his executors, administrators, and assigns; and also for enabling him and them to receive, recover, and enforce the transfer of the said respectively, upon and for the trusts, intents, and purposes aforesaid, according to the true intent and meaning of these presents, as by the said (*assignee*,) his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised, or advised, and required.

In witness, &c.

(Legacy.)

Parties.

Operative part.

Short power of attorney.

Habendum.

### *An Assignment of a Legacy.\**

This indenture, made, &c., between, &c. [*Recite the will, (showing the bequest of the legacy,) and the agreement to assign the same.*] Now, this indenture witnesseth, that, in consideration of, &c., he, the said A. B., hath bargained, sold, assigned, transferred, and set over unto the said C. D., his executors, administrators, and assigns, all that the said legacy, or sum of L. so as aforesaid bequeathed to him, the said A. B., in and by the said in part recited will of the said O. P. deceased, (*and by the same will directed to be raised under the trusts of the said term of, &c., thereby created as aforesaid.*)

And all interest due, or to grow due, upon or in respect of the said sum of L. , and all the right, &c., together with all powers, remedies, and means requisite and necessary for calling in, suing for, or compelling payment of the same. To have and to

\* Legacies and moneys made payable out of real and personal estate may be assigned by way of mortgage, and with a proviso that on repayment of the loan, the legacy or sum shall be re-assigned; or the more preferable mode is to assign the same with a power of attorney to the assignee in trust to receive the same, and after deducting and retaining thereout the money lent and interest, to pay the surplus to the assignor.

hold the said, &c., unto the said C. D., his executors, administrators, and assigns. (*Legacy.*) (*In trust, &c.*) [*Add covenants that A. B. will not receive the said legacy or sum of money, and for further assurance. See p. 265.*]

In witness, &c.

*An Assignment of a Deed of Covenant.*

(*Covenant.*)

This indenture, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. Parties.  
Whereas by an indenture, dated, &c., and made between, &c., the said C. D. covenanted, promised, and Recitals.  
agreed with and to the said A. B., his, &c., that, &c. And whereas [*recite the occasion of the assignment, and that upon such occasion*] it was agreed that the benefit of the said in part recited indenture should be assigned to the said C. D. Now, this indenture Operative  
witnesseth, that, in pursuance of the said agreement, part.  
and of 5s., &c., he, the said A. B., hath assigned, transferred, and set over, and, &c., doth, &c., all that the hereinbefore in part recited indenture, and all the right, title, and interest of him, the said A. B., in and to the same, and all benefit and advantage to be derived therefrom, or from all or any of the covenants, provisos, clauses, and agreements therein contained.  
To have and to hold the said in part recited indenture and other the premises hereby assigned, or intended so to be, unto the said C. D., his executors, administrators, and assigns, to and for his or their own use and benefit. [*Add covenants from A. B., Habendum.*  
his heirs, &c., with C. D., his executors, &c., that notwithstanding, &c., the said indenture hereby assigned, or intended so to be, now is and stands in full force and virtue, and that he will not do any act, &c., "whereby the said indenture, or any thing therein contained, may or can be released, discharged, or otherwise prejudicially affected, or whereby the said C. D., his executors, administrators, or assigns, may be prevented from or impeded in receiving all Covenants.

(Covenant.) or any benefit and advantage thereof." And for further assurance, &c. See p. 265.] In witness, &c.

(Insurance.) *An Assignment of a Policy of Insurance upon a Life.*

This indenture, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part, [recite the policy: see p. 23.] And whereas the said A. B. hath contracted and agreed with the said C. D. for the absolute purchase of all his right and interest in the said policy of insurance, at or for the price or sum of L. . Now, this indenture witnesseth, that for carrying the said recited contract or agreement into effect, and in consideration of, &c., the receipt, &c., he, the said A. B., hath bargained, sold, assigned, transferred, and set over, and by these presents doth, &c., unto the said C. D., his executors, administrators, and assigns, all that the said policy of insurance so effected by him, the said A. B., upon the life of the said E. F., in the Life Insurance Office, as aforesaid, and also the said sum of L. 1700 assured thereby, and all other moneys, benefit, and advantage, to be had, received, or obtained, under or by virtue of the said policy, together with full power and authority to ask, demand, sue for, recover, and receive, and give effectual acquittances, releases, and discharges for the said sum of L. 1700, and all the right, title, interest, possibility, property, claim, and demand whatsoever, both at law and in equity, of him, the said A. B., in, to, out of, or upon the said policy, money, and premises hereby assigned, or intended so to be, and every part thereof respectively. To have, hold, receive, take, and enjoy the said policy, money, and all and singular other the premises hereby assigned, or intended so to be, unto the said C. D., his executors, administrators, and assigns, for his and their absolute benefit, in as full, ample, and beneficial a manner, as he, the said C. D., his executors or administrators,

Contract for purchase.

Assignment of the policy.

Power.

Habendum.

might or could have enjoyed the same, if these pre- (Insurance.)  
sents had not been made. [Add a covenant here by Covenants  
A. B., that he has done no act whereby the said po- that he has  
licy of insurance are, is, can, shall, or may be charg- not incum-  
ed or incumbered in any way howsoever; and that bered, and  
while the said sum of L.1700 continues to be insur- for further  
ed as aforesaid, will do and execute all further acts assurance.  
for the better assigning and assuring the said policy  
money and premises. See p. 265.]

In witness, &c.

*An Assignment of a Policy of Insurance against Fire.*

This indenture, made, &c., between, &c. Where- Parties.  
as by a certain deed-poll,<sup>a</sup> or policy of insurance, Recital.  
numbered , bearing date, &c., under the hands  
and seals of three of the directors of the Guardian  
Insurance Office for insuring buildings from fire, a  
certain brick dwelling-house, and other the premises  
therein described, situated on the north side of, &c.,  
in the county of, &c., in the occupation of, &c., are  
insured from loss by fire, from and after the  
day of then next, for and during the term of  
seven years from the day of thence next  
ensuing; and whereas the said A. B. hath agreed  
with the said C. D. to assign to him the said policy  
of insurance, and all benefit therefrom, at or for the  
sum of L. . Now, this indenture witnesseth, Operative  
that for and in consideration of the sum of L. part.

<sup>a</sup> The policy may be recited thus, (if intended to follow in an assignment of a lease in a second witnessing part after the covenants in the assignment:) "And whereas the said messuages, &c., are or have been insured against damage by fire for the term of seven years from the, &c., now last past, in and by a certain deed-poll or policy of insurance hereinafter more particularly described, dated, &c., at the Guardian Insurance Office in London, and it has been agreed by and between the said parties, that the said policy of insurance, and all benefit therefrom, should be assigned to the said C. D." The policy is then assigned, with a short power of attorney.

(Insurance.) to the said A. B. in hand paid by the said C. D., at, &c., the receipt whereof is hereby acknowledged, he, the said A. B., hath bargained, sold, assigned, transferred, and set over, and by these presents doth bargain, sell, assign, transfer, and set over unto the said C. D., his executors, administrators, and assigns, the said recited deed-poll, or policy of insurance, and all and every the sum and sums of money that shall or may become due and payable thereon, or by virtue thereof, and all benefit and advantage which shall or may accrue in respect of the same, and all the right, title, and interest of him, the said A. B., in and to the same respectively. And the said A. B. doth hereby authorize, nominate, constitute, and appoint the said C. D., his executors, administrators, and assigns, in his or their own name or names, and for his and their own proper use, or in the name of the said A. B., his executors or administrators, but to and for the use of the said C. D., his executors, administrators, and assigns, to receive from the trustees or directors for the time being of the said insurance-office, all such sum and sums of moneys as shall or may become due and payable on the said recited policy; and upon non-payment thereof, or of any part thereof, to sue for, recover, and receive the same, and to give receipts or other discharges for the same. And all and whatever the said A. B., his executors, administrators, or assigns, shall lawfully do, or cause to be done, in and about the premises aforesaid, the said A. B. doth by these presents confirm and allow as fully and effectually as if he himself were personally present, and did the same. [*Covenants that A. B. has done no act to incumber; and for further assurance.*]

Power of attorney to receive, &c.

In witness, &c.

*Observations on Assignments of Choses in Action.*

A chose in action may be defined to be any chattel or personal estate, as a term of years, a debt, money in the funds, or a piece of furniture, and, when

such chattel is not in the possession of the person (Observations.) entitled thereto, and can, therefore, only be recovered by action or suit in a court of justice, it is called a chose in action.

This definition may, perhaps, be objected to as too limited, as some text writers include these rights to land, which are of a higher nature than chattel interests, amongst choses in action; but as it will be found that the term is generally used in its more accurate and confined sense, it will prevent confusion to adopt it here.

Rent, after it becomes due, is severed from the reversion, and a mere chose in action.<sup>b</sup>

Though choses in action are not assignable at law,<sup>c</sup> yet a transfer of them is in practice constantly effected, and courts of equity will enforce such transfer, if they do not savour of maintenance or champerty,<sup>d</sup> even against creditors, in case of bankruptcy,<sup>e</sup> if made upon good consideration,<sup>f</sup> but not otherwise.<sup>g</sup> No particular form of assignment is required,<sup>h</sup> a covenant being quite sufficient,<sup>i</sup> nor is it necessary that the assignment should be by deed or even in writing,<sup>j</sup> though in practice one or the other is usually adopted. When made by deed, assignments of choses in action are liable to the same stamp duties as deeds affecting real property.

<sup>b</sup> *Flight v. Bentley*, 7 Sim. 151.

<sup>c</sup> *Dyer*, 20; *Plowd.* 185; *Master v. Miller*, 4 T. R. 329.

<sup>d</sup> *Prosser v. Edmonds*, 1 Young and Col. 481.

<sup>e</sup> *Crouch v. Martin*, 2 Vern. 595; *Wright v. Wright*, 1 Vez. 409.

<sup>f</sup> *Brown v. Heathcote*, 1 Atk. 160; *Row v. Dawson*, 1 Vez. 332; *Douglas v. Russel*, 4 Sim. 524.

<sup>g</sup> *Colman v. Sarrel*, 1 Ves. 50; *Edwards v. Jones*, 7 Sim. 325, and 1 M. and Cr. 226.

<sup>h</sup> *Row v. Dawson*, 1 Vez. 332; *Whitfield v. Faussett*, 1 Vez. 387.

<sup>i</sup> *Townshend v. Windham*, 2 Vez. 6.

<sup>j</sup> *Howell v. MacIver*, 4 T. R. 329; *Heath v. Hall*, 4 Taunt. 326.



(Observations.)

The circumstance that choses in action are not transferable at law, renders the assignment of them very insecure; for, as the courts of law will not recognise the title or rights of the assignee, who, by the assignment, becomes merely a cestui que trust,<sup>k</sup> any payments made to the assignor, or any release executed by him, even although he may have bound himself by a covenant not to release, and, in short, any circumstance which would affect the rights of the assignor, in case he had not made the assignment, would at law be equally operative, notwithstanding his having parted with the beneficial interest. This subject is noticed in speaking of the transfer of mortgages; and the same observations that are there made are equally applicable here. Courts of equity, however, have stepped in to remedy this evil as far as possible; for though they have decided that the assignee of a chose in action takes it liable to all the equities to which it was subject in the hands of the assignor,<sup>l</sup> yet they enable him to protect himself against the acts of the assignor subsequent to the assignment, by determining that where notice of the assignment has been given to the party liable to pay or render the chose or chattel, they will prevent him availing himself of any payments made to the assignor after such notice, and, notwithstanding such payments, will compel him to pay the same over again to the assignee,<sup>m</sup> nor will they allow him to take advantage of a release,<sup>n</sup> or any other circumstance that may have affected the legal rights subsequent to such notice.

A person, therefore, taking an assignment of a chose in action, should not only take a covenant from the assignor, that his right to the debt or chattel is

<sup>k</sup> Shack v. Anthony, 1 M. and S. 572.

<sup>l</sup> Coles v. Jones, 2 Vern. 392; Priddy v. Rose, 3 Meriv. 86; Bradwell v. Catchpole, 3 Swan. 78.

<sup>m</sup> Gardner v. Lachlan, 8 Sim. 129.

<sup>n</sup> Wilkinson v. Stafford, 1 Ves. 43.

still a subsisting one, and that he will not release it or revoke the power of attorney, which should always form part of such assignment, and which, if given for valuable consideration, is not revocable;\* but also give immediate notice of such assignment to the person from whom the debt or chattel may be receivable or recoverable. (Observations.)

A mortgagee or assignee of shares in any company must give notice of his incumbrance or other interest to the secretary, if he would retain the benefit of it against subsequent purchasers for valuable consideration.<sup>†</sup> It has been decided, that an assignment of a policy of insurance is invalid in case of bankruptcy, if notice had not been given to the insurers.<sup>‡</sup>

Where the property intended to be assigned is in the hand of a trustee, the purchaser or mortgagor should, previous to the execution of the assignment, make inquiries from such trustee as to the incumbrances affecting the property. The answer of the trustee to such inquiries may be relied upon with confidence, for he will scarcely venture to make any fraudulent representations, since, if any loss should be thereby occasioned to the assignee, a court of equity would compel him to make it good.<sup>§</sup> After the execution of the assignment, a notice thereof should also be given to the trustee, as in other cases.

The necessity of these precautionary measures cannot be too much enforced, for, by neglecting them, subsequent incumbrances may gain a priority, and thereby postpone, if not entirely defeat, the rights of the negligent purchaser.

Though courts of law do not so far recognise the rights of the assignee of the chose in action as to permit him to sue in his own name, yet, for some purposes, his interest is acknowledged by them; thus, in ques-

\* *Walsh v. Whitecombe*, 2 Esp. Ca. 565.

† *Cumming v. Prescott*, 2 Young and Col. 488.

‡ *Williams v. Thorpe*, 2 Sim. 257. *Ex parte Colville*, Mont. 110.

§ *Burrows v. Lock*, 10 Ves. 470.

(Observations.)

tions under the bankrupt laws, they consider that the assignor is reduced by the assignment to a simple trustee, and hold that his interest does not pass to his assignees;<sup>a</sup> and, in some instances, they have permitted a debt due from the assignee to be set off against his claim, when suing in the name of the assignor.<sup>c</sup>

The rights of the debtor will not be affected by any act of the creditor or his assignee; the assignment, therefore, of a debt will not prevent the debtor availing himself, as against the assignee, of any legal defence, as the statute of limitations or the statute of frauds, which he may acquire independently of the acts of the vendor subsequent to the assignment.

Simple contract debts, rents, interest on mortgages, &c., and arrears of dower, are barred after six years, whilst bonds or mortgage debts, or other sums charged on lands, and legacies, are presumed to be satisfied after twenty years;<sup>b</sup> but in all cases payment of a part, or any interest, or a signed acknowledgment by the party or his agent, will prevent the operation of the statute, as in the case of simple contract debts under the old statute of limitations.

It need scarcely be mentioned, that an exception to this rule of law against the assignment of choses in action exists in favour of merchants, in the cases of bills of exchange and promissory-notes, and that the bail-bond given to the sheriff, or an arrest on mesne process, and the bond given by the petitioning creditor in bankruptcy to the Lord Chancellor, are inroads which have been made by the legislature upon that rule.

A man may assign those choses in action of his wife, to the immediate possession of which she is

<sup>a</sup> *Winch v. Keeley*, 1 T. R. 619; *Howell v. MacIver*, 4 T. R. 690.

<sup>c</sup> *Bottomley v. Brooke*, *Rudge v. Birch*, cited in *Winch v. Keeley*.

<sup>b</sup> 3d and 4th William IV. cap. 27, sec. 40, 41, and 42.

entitled;<sup>v</sup> but his assignment of her reversionary choses in action will not be valid as against her surviving, in the event of their not falling into possession during the coverture, even though she should have concurred in the assignment.<sup>w</sup>

It is rather difficult to gather from the decisions a principle upon which the courts of equity act in enforcing contracts for the purchase of choses in action, but they will, I think, justify the conclusion, that, as a general rule, these courts will leave the parties to their legal remedies, and not interfere to enforce specific performance of an agreement for the purchase of a chose in action, unless it is clearly shown that the damages which could be obtained in an action at law for the breach of the contract would be an insufficient remedy; but even then a very strong case must be made out to entitle a party to the aid of the court.<sup>x</sup>

The courts have refused to decree specific performance of agreements for the purchase of South Sea stock,<sup>y</sup> York Buildings stock,<sup>z</sup> and, in a case in Vesey,<sup>a</sup> Lord Eldon declared, that it was perfectly settled, that the courts will not enforce the specific performance of an agreement for a transfer of stock, but they have, under certain circumstances, granted that relief in aid of a contract for Government stock<sup>b</sup> and East India stock.<sup>c</sup>

<sup>v</sup> *Duke of Chandos v. Talbot*, 2 P. Williams, 608.

<sup>w</sup> *Honner v. Morton*, 3 Russ. 65; *Purdew v. Jackson*, 1 Russ. 1; *Stiffe v. Everett*, 1 M. and Cr. 41.

<sup>x</sup> *Witley v. Cottle*, 1 S. and S. 174; *Colt v. Netterville*, 2 P. Williams, 304; *Adderley v. Dixon*, 1 S. and S. 607.

<sup>y</sup> *Capper v. Harris*, Bunb. 135; *Cud v. Rutter*, 1 P. Williams, 570.

<sup>z</sup> *Dorrison v. Westbrook*, 5 Vin. 510, pl. 22.

<sup>a</sup> *Nutarown v. Thornton*, 10 Ves. 159.

<sup>b</sup> *Doleret v. Rothschild*, 1 S. and S. 590.

<sup>c</sup> *Gardener v. Pullen*, 2 Vern. 394. With respect to the purchase of a debt, see *Adderley v. Dixon*, 1 S. and S. 394; *Wright v. Bell*, 5 Price, 325.

Choses in action are liable to the process of sequestration,<sup>d</sup> and, by the recent act of the 1st and 2d Vict. cap. 110, the sheriff, under the writ of *fi. fa.*, is empowered to take them in execution, and sue in his own name upon such of them as may be checks, bills, or securities for money, and apply the money to be thereby raised in satisfaction of the judgment-creditor's claims.

<sup>d</sup> *Wilson v. Metcalfe*, 1 Bea. 263.

## CHAPTER XIII

### ATTORNMENT.\*

In the, &c., between, &c.

We, whose names are hereunto subscribed, being tenants in possession of the premises for which this action has been brought, situate, &c., do hereby severally attorn tenants to P. Q., of, &c., for such parts of the said premises as are in our respective possessions; and we have this day severally paid unto the said, &c., the sum of one shilling each upon such attornment, on account of, and in part payment of the rent due, and to become due, from us severally and respectively, for and in respect of the said premises; and we also severally and respectively become tenants thereof to the said, &c., from, &c.

As witness our hands, &c.

#### *Notice from Assignees of a Bankrupt to Tenants to attorn to a Purchaser.*

To all and every the tenants late of A. B., of, &c., against whom a fiat in bankruptcy hath been awarded and issued, or of us, as the assignees of his estate and effects, and of all and every the messuages and tenements, with the appurtenances, in, &c., and else-

\* Tenants in possession, in order to save the expense of executing a writ of possession, may attorn to the lessor of the plaintiff.

where, late belonging to the said A. B., and now unto us as his assignees. These are to require and authorize you, and each and every of you, forthwith to attorn and become tenants and tenant, severally and respectively, to C. D., (to whom the messuages, tenements, and premises were mortgaged by the said A. B.,) of and for all and singular the said messuages or tenements and hereditaments by you, each and every or any of you, holden, by lease or otherwise, by, from, or under the said A. B., or us as his assignees, and to pay unto the said C. D., his executors, administrators, or assigns, all rent that shall grow due from you, each and every or any of you, severally and respectively, for the premises aforesaid, from the day of                      now last past, until you shall have further notice from us in this respect; and for your so doing these presents shall be to you, each and every of you, a sufficient warrant, order, and indemnity.

Witness our hands and seals, this              day of

*Another Form of Attornment, with Schedule.*

We, whose names are hereunder subscribed, do hereby severally attorn and become tenants to A. B., Esq., of the several farms, lands, tenements, and hereditaments, situate at the several places mentioned and set opposite to our respective names in the schedule' hereunder written; and do hereby agree to pay such respective rents for the same, and from such several periods or times, as in the said schedule expressed; and we have severally given unto the said A. B., the sum of 1s. in the name of attornment, and in part of the said rents.

As witness our hands, this              day of, &c.

' The schedule should contain the tenants' names, the names of the farms and premises, where situate, the rents, and the usual days of payment.

## CHAPTER XIV.

### ATTORNEYS.

#### *Articles of Clerkship to an Attorney and Solicitor.*

ARTICLES of agreement, indented, had, made, concluded, and fully agreed upon, the            day of, &c., between A. B., of, &c., gent., one of the attorneys of her Majesty's Court of Queen's Bench, Common Pleas, and Exchequer, at Westminster, and a solicitor in the High Court of Chancery, of the one part, and C. F., of, &c., and E. F., son of the said C. F., of the other part; witnesseth, that the said E. F., of his own free will, and by and with the consent and approbation of the said C. F., his father, hath put, placed, and bound himself, and by these presents doth put, place, and bind himself clerk to the said A. B., to serve him from the day of the date hereof, for and during, and unto the full end and term of five years, from hence next ensuing, and fully to be complete and ended. And the said C. F. doth for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said A. B., his executors, administrators, and assigns, by these presents, in manner following; (that is to say,) That the said E. F. shall and will well and faithfully serve the said A. B. as his clerk, in the profession of an attorney-at-law, and solicitor in Chancery, from the day of the date hereof, for and during the said term of five years; and that he, the said E. F., shall not at any time, during the said term of five years, cancel, obliterate, spoil, destroy, waste,

Agreement.

Witnesseth.

Covenant by  
C. F. that  
E. F. shall  
faithfully  
serve.



embezzle, spend, or make away with any of the books, papers, writings, moneys, stamps, or other property of the said A. B., or of any of his clients or employers, which shall be deposited in his hands, or entrusted to his custody or possession, or to the care, custody, or possession of him, the said E. F.; and that in case he, the said E. F., shall act contrary to the last-mentioned covenant, or if he, the said A. B., his executors or administrators, shall sustain or suffer any loss, damage, or prejudice, by the misbehaviour or neglect of the said E. F., he, the said C. F., his executors or administrators, shall make good and reimburse him, the said A. B., his executors or administrators, the amount and value thereof. And further, that he, the said E. F., shall and will, from time to time, and at all times during the said term of five years, keep the secrets of the said A. B., and readily and cheerfully obey and execute his lawful and reasonable commands, and shall not depart or absent himself from the service or employ of the said A. B. at any time during the said term, without his consent first obtained; but shall, from time to time, and at all times during the said term, conduct himself with all due diligence, honesty, and temperance. And that he, the said C. F., his executors or administrators, shall and will, from time to time, and at all times during the said term of five years, at his and their proper costs, find and provide the said E. F. with all and all manner of necessary and becoming apparel and washing, and also physic and surgery and medical attendance in case of sickness. And the said E. F. doth hereby for himself, and on his part, covenant and agree to and with the said A. B., his executors and administrators, that he, the said E. F., shall and will truly and honestly serve him, the said A. B., at all times for and during the said term, as a faithful clerk ought to do, in all things whatsoever, in the manner above specified. In consideration whereof, and of the sum of L.500 of lawful money of Great Britain by the said C. F.

And to find  
clerk in ap-  
parel.

Covenant by  
clerk to serve.

Considera-  
tion

to the said A. B. in hand well and truly paid, at or before the sealing and delivery of these presents, (the receipt whereof he, the said A. B., doth hereby acknowledge, and of and from the same, and every part thereof, doth acquit, release, and discharge the said C. F., his executors and administrators, and every of them, for ever by these presents,) he, the said A. B., for himself, his heirs, executors, and administrators, doth covenant, promise, and agree to and with the said C. F., his executors and administrators, by these presents, in manner following; (that is to say,) that he, the said A. B., shall and will accept and take the said E. F. as his clerk, and shall and will provide him during the said term with board and lodging. And also that he, the said A. B., shall and will, by the best ways and means he may or can, and to the utmost of his skill and knowledge, teach and instruct, or cause to be taught and instructed, the said E. F. in the said practice of profession of an attorney-at-law, and solicitor in Chancery, and also shall and will, at the expiration of the said term, use his best means and endeavours, at the request, costs, and charges of the said C. F. and E. F., or either of them, to cause and procure him, the said E. F., to be admitted and sworn a solicitor of the said Court of Chancery, and an attorney of her Majesty's said Courts of Queen's Bench, Common Pleas, and Exchequer, or either of them, or any other of her said Majesty's courts of law or equity, provided he, the said E. F., shall have well and faithfully served him, the said A. B., during the term of his said intended clerkship. Provided always, and it is hereby agreed and declared between and by the parties hereto, that if the said E. F. shall be minded and desirous to spend the whole, or any part of the last year of the said term of five years in the office of an attorney or solicitor in London or Westminster, or in the chambers of a barrister, conveyancer, or special pleader, then, and in such case, it shall be lawful for the said E. F. so

Covenant by  
master to in-  
struct.

to do, any thing herein contained to the contrary thereof in any wise notwithstanding; and in case such attorney or solicitor, as last hereinbefore mentioned, shall not be the agent of the said A. B., then he, the said A. B., shall and will, at the requests, costs, and charges of the said E. F., assign him, the said E. F., together with these presents, unto such attorney or solicitor. In witness, &c.

#### ASSIGNMENT OF ARTICLES OF CLERKSHIP.

**Parties.** This indenture, made, &c., between A. B., of, &c., of the first part; C. D. of the second part; and E. F. of, &c., of the third part.

**Witnesseth.** Whereas, [*recite the articles of clerkship.*] Now, this indenture witnesseth, that, in consideration of the covenants and agreement hereinafter contained, and also in consideration of the sum of L. , &c., he, the said A. B., at the request, and by and with the consent and approbation of the said C. D., testified by his being a party to and executing these presents, hath assigned, transferred, and set over, and by these presents doth assign, transfer, and set over, unto the said E. F., his executors, administrators, and assigns, as well the said recited articles, and all benefit whatsoever to be had or made thereof, as also all the right, interest, property, profit, advantage, claim, and demand whatsoever, or howsoever to arise, or be had or made unto him, the said A. B., from henceforth, or the service of him, the said C. D., during the now residue of the said term of five years, by force or virtue of the said recited articles, or otherwise howsoever. And he, the said E. F., for himself, &c., doth hereby covenant, &c., to and with the said A. B., his, &c., in manner following; (that is to say,) that he, the said E. F., shall and will, at all times during the residue of the said term, in the best manner he can, instruct and inform the said C. D., as his clerk, in the business, practice, and profession of an attorney in her Majesty's Court of Queen's Bench, at Westminster, and of a solicitor

Covenant as  
to instruction  
and admit-  
tance.

in her Majesty's Courts of Equity, and all other courts which the said E. F. now doth or shall use or practise in, and all matters and things relating thereto, during the residue of the said term. And also that he, the said E. F., his executors or administrators, shall and will, from the day of the date hereof, at his and their own costs and charges, find, allow, and provide the said C. D. in competent and sufficient meat, drink, washing, and lodging, during the residue of the said term, and thereof and therefrom save harmless and keep indemnified the said A. B., his executors and administrators. And, lastly, each of them, the said A. B. and E. F., doth hereby severally covenant with the said C. D., that they, the said A. B. and E. F., at the requests, costs, and charges of him, the said C. D., at any time after the expiration of the said term of five years, shall and will severally certify the respective times of service of him the said C. D. with them the said A. B. and E. F.; and also do any other lawful act, at the requests, costs, and charges of the said C. D., for getting him to be admitted an attorney and solicitor, which shall be adjudged needful and necessary for that purpose.

As to board, &c.

As to certificate of service.

In witness, &c.<sup>5</sup>

<sup>5</sup> The assignment may be by indorsement thus: "The within-named parties having mutually agreed to vacate the within-written contract, it is hereby witnessed, that the within-named E. S., at the request, and by and with the approbation of the within-named I. S., (testified by his being a party to and executing these presents,) doth assign and turn over the said I. S. to P. P., of, &c., gent., to serve him as his clerk, under the conditions within-mentioned, for the remainder of the within-mentioned term of five years; and that the said P. P., hath, by these presents, in consideration of the sum of L. of lawful, &c., in hand paid to him, by the said J. S., (the receipt whereof, &c.,) accepted, taken, and received him, the within-named I. S., to continue and be with him, as his clerk, during the remainder of the within-mentioned term of five years, and

Agreement by attorney to take the clerk during the remainder of his term.

*Affidavit of the Execution of Articles of Clerkship*  
In the, &c.

As to certi-  
ficate of ser-  
vice.

A. B., of, &c., maketh oath and saith, that by articles of agreement, dated, &c., and made between &c., for the considerations therein mentioned, the said clerk did put, place, and bind himself clerk to the said (*attorney*,) to serve him in the profession of an attorney-at-law (*and solicitor in Chancery*,) from the day of the date of the said articles, for the term of five years thence next ensuing, and fully to be complete and ended,<sup>h</sup> and which said articles were in due form of law executed by the said, &c., in the presence of this deponent, and of one C. D., of, &c.; and that the names of A. B. and C. D., set and subscribed to the said articles as witnesses to the due execution thereof, are the proper handwriting of this deponent and of the said C. D.

If the clerk has taken a degree at an university, he will make affidavit, beginning thus: "That he hath taken the degree of bachelor of arts (or law) in the university of, &c., and that he did take such degree within six [or if bachelor of law eight] years next after the day when he was first matriculated in the said university. And this deponent further saith,

Release of the  
covenants of  
the original  
articles.

under the conditions in the within-written articles mentioned. And for the considerations above expressed, they, the said E. S. and I. S., do hereby for themselves and their several heirs, executors, and administrators, mutually release and discharge each other, their executors and administrators, of and from the within articles, and the performance thereof, and of and from all the covenants and agreements therein contained. In witness," &c.

<sup>h</sup> If it be of an assignment of the articles, state here: "And this deponent further saith, that by a certain indenture (or deed-poll) or assignment, dated, &c., and made between, &c., the said (*master*) did assign, &c., [*state the substance*,] and which said assignment was in due form of law executed by, &c., on the same day and year on which it bears date," &c.

that by articles of agreement, dated, &c., and made within (four) years next after the day when this deponent took such degree, between, &c., [as above, stating the service as three instead of five years.]

## OBSERVATIONS ON ARTICLES OF CLERKSHIP.

If a person has taken the degree of bachelor of arts or law in the Universities of Oxford, Cambridge, Dublin, Durham, or London, provided<sup>1</sup> he has taken such degree within four years previously to his being articulated and provided, such degree of bachelor of arts has been taken within six years, or such degree of bachelor of law has been taken within eight years after matriculation, he may be admitted after a service of three years : (1 and 2 Geo. IV., cap. 48, sec. 1; 3 Geo. IV., cap. 16; and 7 Will. IV., and 1 Vic. cap. 56.<sup>2</sup>)

By the second section of 1st and 2d Geo. IV., the clerk, if bound for five years, may serve one year of the same as pupil to a practising barrister or certi-

<sup>1</sup> These provisos do not apply to persons who have taken such degree previous to the passing of the act of the 7th Geo. IV.

<sup>2</sup> It is to be lamented that the spirit of these provisions so little influences parents in articling their children, who, instead of giving them the benefit of a general education till seventeen or eighteen, remove them from school at fifteen, or even fourteen, to place them in an office where, generally speaking, from their age they will learn but little for several years; for not only do legal studies require a more matured mind than a boy of fourteen or fifteen generally has, but as their whole success depends upon themselves, (their masters not having time, ordinarily speaking, to read with or instruct their clerks,) it is important that they should not be articulated at a period when it cannot be expected that they will read for their own sake. The editor trusts that he shall be excused for making these observations; but having seen so many instances of the injurious effects on the minds, and even characters and morals, of young men, from placing them too early at the desk, he could not refrain from diverging thus far.

ficated special pleader, and by rules of court he may serve another year with the agent of his master.

It may with propriety be noticed here, that though articulated clerks are bound by indenture as apprentices are, they are not considered by the law in the light of apprentices. It has, therefore, been decided that the bankruptcy of their master does not vacate the articles, nor are they entitled to a return of any part of the premium under the 6th Geo. IV., cap. 16, sec. 49. (See *ex parte* Prideaux, 3 M. and Cr. 327.)

#### ATTORNEY AND AGENT.

Attorneys are bound by the acts of their agents, (Wallace v. Willington, Bar. 256;) and answerable for their mistakes or negligence, (Collins v. Griffin, Barnes, 37.) An attorney acting as agent for an unqualified person renders himself liable to be struck off the roll, (*Re* Jackson and Wood, 1 B. and C. 270.)

#### *Attorneys' Lien for their Costs.*

An attorney has a lien on the papers and money<sup>1</sup> of his client, of which he obtained possession from or on behalf of his client in his professional character,<sup>2</sup> not only for costs incurred with respect to those particular papers, but for the general balance due to him in that character;<sup>3</sup> but such a lien does not extend to debts due to him in any other than in his professional character, as for money lent.<sup>4</sup>

A solicitor can claim a lien on the papers of an opposite party, or other stranger, for costs due from his client, to the extent only that his client, in whose right only he claims such lien could do so.<sup>5</sup> Thus

<sup>1</sup> 2 J. and W. 214.

<sup>2</sup> *Stevenson v. Blakelock*, 1 M. and S. 535; *Champernowne v. Scott*, Mad. and Geld. 93; 2 Dea. and Chitt. 182.

<sup>3</sup> *Ex parte* Nesbitt, 2 Sch. and Lef. 279; *Hollis v. Claridge*, 4 Taunt. 807; 1 M. and S. 543.

<sup>4</sup> *Worrall v. Johnson*, 2 J. and W. 214.

<sup>5</sup> *Hollis v. Claridge*, 4 Taunt. 809; *Furlong v. Howard*, 2 Sch. and Lef. 115; *Ball v. Taylor*, 8 Sim. 216.

deeds deposited with a solicitor by a tenant for life, cannot be retained against the remainder-man when he becomes entitled to them by the death of such tenant for life.<sup>4</sup> Such lien as before mentioned extends only to those papers or documents of which the solicitor obtained possession in his professional character, but is not limited by the circumstance of their having been originally deposited with him for a particular purpose, if afterwards permitted to remain in his hands.<sup>5</sup> It extends to money recovered in a suit in which he was employed,<sup>6</sup> and also to funds in court,<sup>7</sup> but whether for the particular suit or on the general balance is not quite clear, to money recovered by judgment, or awarded<sup>8</sup> on a reference; to money ordered to be paid to his client for costs,<sup>9</sup> and any other money received by him for his client,<sup>10</sup> if he were entitled to receive them, but not otherwise. Thus a solicitor who, without the authority of the court, received the rents of an estate, of which a receiver had been appointed, was ordered to pay them over to the receiver, without reference to any lien he might otherwise have had on them.<sup>11</sup> Where, however, in suits in equity, costs or other funds become ultimately due to both parties, the lien of the solicitor will extend only to the balance actually payable to his client.<sup>12</sup>

In close connection with this subject, it may be

<sup>4</sup> *Ex parte Nesbitt*, 2 Sch. and Lef. 279.

<sup>5</sup> *Ex parte Pemberton*, 18 Ves. 282.

<sup>6</sup> *Wilkins v. Carmichael*, Dougl. 100; *Welsh v. Hole*, Id. 226.

<sup>7</sup> 4 Madd. 391; 2 Jac. and W. 214; *Irving v. Viana*, 2 Young and J. 70.

<sup>8</sup> *Omerod v. Tate*, 1 East, 463.

<sup>9</sup> *Ex parte Bryant*, 2 Rose, 237.

<sup>10</sup> *Skinner v. Sweet*, 3 Mad. 244; *Ex parte Bowden*, 2 Deac. and Chitt. 182.

<sup>11</sup> *Wickens v. Townsend*, 1 Rus. and Myl. 361.

<sup>12</sup> *Taylor v. Popham*, 15 Ves. 72; *Bawtree v. Watson*, 2 Keen, 713.



mentioned, that, where a sum of money is by decree or judgment payable to the client, his solicitor may give notice to the person liable to pay it, not to do so till his costs are paid, and thereby obtain a lien upon it.<sup>a</sup> A solicitor has no lien upon an original will.<sup>a</sup>

In a recent<sup>b</sup> case it has been decided, that the commissioners for taking the acknowledgments of married women have a lien on the instruments in their possession for the amount of their fees. The right of lien does not cease upon the death of the solicitor, but continues for the benefit of his representatives.<sup>c</sup>

A solicitor has, in several cases, been held to lose his lien by taking security for his costs, though that does not necessarily deprive him of that privilege.<sup>d</sup>

If a solicitor refuses to proceed with the conduct of a cause, he will be ordered to deliver up all the papers which are necessary for the future conduct of the cause, but such order will be made without prejudice to the solicitor's lien, and the papers will be returned to him after the suit is brought to a close, if his right of lien should be then in existence.<sup>e</sup>

The agent of a solicitor has, as against the solicitor employing him, a general lien upon the papers and costs received by him in that character;<sup>f</sup> but as against the clients of the solicitor, the agent has no greater lien than for the costs incurred by him in respect of the documents or moneys upon which the lien is claimed.<sup>g</sup>

<sup>a</sup> *Cowell v. Simpson*, 16 Ves. 282; *Welsh v. Hole*, Doug. 238.

<sup>b</sup> *Georges v. Georges*, 18 Ves. 294; *Balch v. Sykes*, T. and R. 87; *Lord v. Wormleighton*, Jac. 580.

<sup>c</sup> *Ex parte Grove*, 3 Bing. N. S. 304.

<sup>d</sup> *Magrath v. Lord Muskerry*, 1 Ridg. P. C. 477; *Vern*. 171, S. C.

<sup>e</sup> *Stevenson v. Blakelock*, 1 M. and S. 535.

<sup>f</sup> *Colegrave*, 1 T. and R. 400; *Heslop v. Metcalfe*, 8 Sim. 622, and 3 M. and Cr. 183.

<sup>g</sup> 6 Price, 210.

<sup>h</sup> *Moody v. Spencer*, 2 Dowl. and Ryl. 6.

Such lien exists in favour of a clerk in court in chancery, even though he should not be the agent of the solicitor, but employed by the solicitor's agent;<sup>h</sup> and also in favour of a clerk in the crown office.<sup>i</sup> A clerk in court cannot retain deeds from the client for money lent by him to the solicitor, to enable him to carry on the cause; *Grey v. Cockerill*, 2 Atk. 114.

It is scarcely necessary to observe, that the right of lien may, like all other rights, be counteracted or superseded by agreement, and, therefore, where deeds were deposited for the express purpose of securing future advances, they could not be retained for an antecedent debt.<sup>k</sup>

An attorney having a lien on the money recovered by his client, may, if it should come into his hands, retain thereout the amount of his bill; he may stop it *in transitu* if he can lay hold of it. By application to the court he may prevent its being paid over until his demand is satisfied. If the attorney give notice to the defendant not to pay till his bill be discharged, a payment by the defendant after such notice would be in his own wrong, and similar to paying a debt which had been assigned, after notice.<sup>l</sup>

As to money recovered.

The court upon motion will compel an attorney to re-deliver documents, on payment of what may be due to him in the cause for which they were delivered. If they were delivered for a special purpose, he cannot detain them for another demand; (7 East, 50.)

As to deeds.

Formerly, if an attorney practised in his own name in a court in which he had not been admitted, he could maintain no action for his fees, nor had he any lien for his costs or money disbursed; (*Latham v. Hide*, 1 Dow. P. C. 594; 1 Crom. and Meeson, 128;)

<sup>h</sup> *Farewell v. Cocker*, 1 P. Williams, 460; 3 Burr. 1313; *Potter v. Hyatt*, 2 Y. and Col. 112.

<sup>i</sup> *Waldrons*, case 2, *Strange*, 1126.

<sup>k</sup> *Mountford v. Scott*, *Turn. and Russ.* 274.

<sup>l</sup> *Welch v. Hole*, *Dougl.* 238.

but since the passing of the 1st Vict., cap. 56, an attorney or solicitor admitted in one court may practise in the others, if his name be enrolled according to the provisions of the 1st and 2d Vict., c. 45.

#### TAXATION OF ATTORNEYS' BILLS.

There does not appear to be any precise limit to the time within which a solicitor's bill may be taxed. The payment of a bill is not considered as a waiver of the right of taxation;<sup>m</sup> but the court, after payment, and a subsequent acquiescence of any length of time, will not direct taxation, unless very gross charges are distinctly pointed out;<sup>n</sup> nor where the bill has been paid to the solicitor while living, will taxation be directed against his representatives.<sup>o</sup>

An agreement between an attorney and his client, fixing his charges at a particular rate, will not deprive the latter of his right of taxation, and the taxing officer will exercise his discretion in following or disregarding the agreement as he may think fit.<sup>p</sup>

Where in equity the common order for taxation has been obtained without notice to the solicitor, in cases where it is unfit that the order should be made as a matter of course, such order will be discharged without a discussion of the merits of the case.<sup>q</sup>

Where, upon taxation of his bill of costs, more than a sixth is taken off, a solicitor or attorney is, under 2d Geo. II., cap. 23, sec. 22, liable to pay the costs of the taxation; but as such costs are considered in the nature of a penalty for the excessive demand, they are payable only by the party making such demand, and not by his personal representatives after

<sup>m</sup> *Howell v. Edmunds*, 4 Russ. 67.

<sup>n</sup> *Plenderleath v. Frazer*, 3 V. and B. 174; *Norfolk v. Smith*, 2 M. and Cr. 495.

<sup>o</sup> *Maddeford v. Austwich*, 3 M. and Cr. 423.

<sup>p</sup> *Drax v. Scroope*, 1 Dowl. 69; 2 Barn. and Adol. 580.

<sup>q</sup> *Gregg v. Taylor*, 1 Beav. 123.

his death, or his assignees, in case of 'bankruptcy or insolvency.

If the client is resident abroad, the solicitor may insist upon his giving security for the cost of taxation previous to his bill being taxed.\*

It appears that though trustees, who have employed and even paid a solicitor, are satisfied with his bill, and do not choose to take any steps to procure its taxation, the cestuique trusts, out of whose funds the bill must be paid, may make use of their trustees' names in order to procure a taxation.†

#### PROFESSIONAL COMMUNICATIONS.

As attorneys and solicitors are sometimes called upon to give evidence in reference to matters which came to their knowledge as professional men, where they have not the benefit and indemnity of a judge's opinion to guide them as to the propriety of the required disclosure, a short reference to the cases upon privileged communications may not be altogether unacceptable to the profession, especially when it is considered that any mistaken view of their duty in this respect may subject professional men to considerable expense, if, on the one hand, they decline answering questions they are bound to answer,‡ or may, on the other hand, endanger the interests of their clients by making known that which it was their client's privilege and their own duty to have refrained from disclosing.

Though the correct application of the principles is not always very easy, the principles themselves are very simple.

\* *Willasey v. Mashiter*, 3 M. and K. 293; *Alsop v. Lord Oxford*, 1 M. and Cr. 26.

† *In re Passmore*, Beav. 94.

‡ *Hazar v. Lane*, 3 Mer. Cro. 285; *Grave v. Sansom*, 1 Bea. 297.

§ *Sawyers v. Birchmore*, 3 Mylne and K. 572.

As it is necessary for the fair investigation of, and adjudication upon every case, that parties should be put as much on an equality as possible, and this equality could never be obtained if parties were compelled to conduct their own cases in person, they were permitted to employ others to act in their stead, or, as it is now more technically called, as their attorneys, in the conduct of their suits in the different courts of justice. And as they were not permitted to give evidence for themselves, on the one hand, so, on the other, they were not compelled to give evidence against themselves and for their opponents. The same rule was applied to those who represented them in court, whether as counsel or attorneys, who could not, therefore, be compelled to give evidence of what was communicated to them by their employers or clients, for the purpose of qualifying them to conduct their cause, and fairly represent their interests.

It must be acknowledged at once, that, unless this rule prevailed, little would have been the value of the privilege of appointing another to conduct a cause, for what could an attorney do for his client, if ignorant of the nature of his case, and how would a person venture to give that information necessary to qualify him to conduct his case, with the knowledge that he was thereby making his counsel or attorney the witness upon whose evidence his estates might be recovered from him, his reputation lost, or even his life forfeited?

From these few observations it will be seen, that the person employing the attorney is alone interested in his secrecy as to the communications that he may have made to them, and that the attorney cannot insist upon it as his right, or waive it at his pleasure; such secrecy is *his* duty, but his client's privilege, and, unless waived by him, continues during the whole life of the party confided in,\* though the relation

\* *Parkhurst v. Lowton*, 2 Swanst. 216.

\* *Wilson v. Rastall*, 4 T. R. 759.

of client and solicitor may have long ceased to exist between them. And this rule is so strictly enforced, that a party would not be permitted to employ an attorney in the conduct of a suit in which such attorney had previously been engaged for the opposite party, though he might have previously ceased to have been employed, considering that the knowledge which such attorney must have obtained by his previous employment on the other side would give an advantage to the party seeking to engage his services.

So great is the respect which the law shows to this privilege, that a party may in many cases be excluded from obtaining, by the examination of the solicitor, that information which the client himself would not be allowed to withhold.<sup>2</sup>

The exception to the general right which a litigant has to the evidence of every one on his behalf, which exists in the case of attorney and counsel, is strictly confined to the cases which gave rise to it, and the client is therefore not entitled to prevent his opponent from examining his attorney upon any matters which were not communicated by him to such attorney in that character. Solicitors and attorneys, and their agents,<sup>3</sup> proctors, and counsel, are considered as being within the rule, but it does not extend to medical men, spiritual advisers, or any other persons but those I have mentioned.<sup>4</sup> Letters, and other communications, therefore, between co-defendants, with reference to their defence, are not protected from discovery.<sup>5</sup> If an attorney were compellable to disclose the advice he gives, or the communications he may make to his client, the privilege of the latter would be but a dead letter, such advice

<sup>2</sup> *Greenlaw v. King*, 1 Beav. 139.

<sup>3</sup> *Vent v. Pacey*, 4 Russ. 193.

<sup>4</sup> *Vallant v. Dodomead*, 2 Atk. 524; *Greenlaw v. King*, 1 Beav. 137.

<sup>5</sup> *Whitbread v. Gurney*, 1 Younge, 541.

and communications<sup>b</sup> are therefore equally sacred as those made to him by the client. The circumstance of the relation of attorney and client having once existed, either before or after the communications have taken place, does not extend the privilege to communications made at a time when that relationship did not exist,<sup>c</sup> nor are all the communications which are made during the continuance of that relationship privileged, but those only are so privileged which are made by a person to his own counsel or attorney in their professional character,<sup>d</sup> upon subjects ordinarily within the course and scope of their professional employment, whether with reference to proceedings then pending or not. Lord Brougham, in his judgment in *Greenough v. Gaskell*,<sup>e</sup> in speaking of the protection afforded to the communications made to counsel, attorneys, or solicitors, said, that, as regards them, "it does not appear that the protection is qualified by any reference to proceedings pending or in contemplation. If, touching matters that come within the ordinary scope of professional employment, they receive a communication in their professional capacity, either from a client or on his account and for his benefit, in the transaction of his business, or, which amounts to the same thing, if they commit to paper in the course of their employment, on his behalf, matters which they know only through their professional relation to the client, they are not only justified in withholding such matters, but bound to withhold them, and will not be compelled to disclose the information or produce the papers in any court of law or equity, either as party or as witness. If this protection were confined to cases where proceedings had commenced, the rule would exclude the most confidential, and, it may be,

<sup>b</sup> *Richards v. Jackson*, 18 Ves. 472.

<sup>c</sup> *Cuts v. Pickering*, 1 Vent. 197.

<sup>d</sup> *Wilson v. Rastall*, 4 T. R. 753; *Morgan v. Shaw*, 4 Mad. 57.

<sup>e</sup> 1 Mylne and K. 101.

the most important of all communications, those made with a view of being prepared either for instituting or defending a suit up to the instant that the process of the court issued."

Communications respecting a person's title to his lands,<sup>f</sup> upon subjects connected with making his will, or the preparation of deeds and other instruments,<sup>g</sup> are considered within the scope of their professional employment, and are therefore privileged.

When the attorney has made himself at all a party to his client's transactions, as by attesting a deed,<sup>h</sup> or assisting in the preparation of a mortgage, on an usurious consideration, or in obtaining a fraudulent release, the privilege ceases to exist; but, on the contrary, he has in some cases of that character been made a party to a suit against his client in order to obtain a discovery from him, and has, like other agents, similarly situated, been made liable for the costs, in case of his principal's insolvency.<sup>i</sup>

The principle is the same whether the communications are written, or made by word of mouth, or conveyed through any other medium, as the clerk of the counsel, or solicitor,<sup>k</sup> his agent,<sup>l</sup> or interpreter,<sup>m</sup> and a like protection is extended to them. In order to make such protection complete, the privilege ought to extend to the representatives of the counsel or solicitor into whose hands his papers would most probably fall; and though I cannot find any case in opposition to that view, it does not appear that the point has yet been decided in the affirmative.<sup>n</sup>

<sup>f</sup> 2 Brod. and Bing. 6.

<sup>g</sup> Anon. Skin. 404; Robson v. Kemp, 5 Esp. 52.

<sup>h</sup> Sandford v. Remington, 2 Ves. 189.

<sup>i</sup> Bowles v. Stewart, 1 Sch. and Lefroy, 9.

<sup>k</sup> Taylor v. Foster, 2 Car. and P. 195; Foot v. Payne, 1 C. and P. 545; 1 Ry. and M. 165.

<sup>l</sup> Parkins v. Hawkshaw, 2 Stark, N. P. C. 239.

<sup>m</sup> Du Barre v. Lovett, Peak, N. P. C. 78; 4 T. R. 756.

<sup>n</sup> See on this point Mr Wigram's work on Discovery, p. 63.



In consistency with, and in illustration of, the principles I have adverted to, it has been decided, that the knowledge which a professional adviser may obtain from being present when communications are made to his client,<sup>o</sup> or from communications made to him from an adverse party or any other person, is not privileged from disclosure, though, in the former case, he might have been present in his professional character, and, in the latter, the communications might have been made to him in that capacity.<sup>p</sup>

<sup>o</sup> *Sandford v. Remington*, 2 Ves. 189; *Desborough v. Rawlins*; 3 M. and C. 515; 1 M. and R. 104.

<sup>p</sup> *Spencely v. Schulenburg*, 7 East, 357.

## CHAPTER XV.

### AWARDS.

#### *An Award.*

To all to whom these presents shall come, I, A. B., Recital.  
of, &c., send greeting : Whereas,<sup>a</sup> in and by two several bonds or obligations in writing, under the re- Of bonds.  
spective hands and seals of C. D., of, &c., and E. F.,  
of, &c., bearing date respectively on or about the,  
&c., the said C. D. became bound to the said E. F.,  
and the said E. F. became bound to the said C. D.,  
in the penal sum of L. , with conditions there-  
under written, to stand to, &c., [*state the condition ;*]  
and it was agreed between the said parties that the  
submission should be made a rule of court, which  
was afterwards accordingly done ; and also that the  
costs and charges of the said bonds and obligations,  
and all costs and charges of and attending the said  
arbitration and award, should be in the discretion  
and subject to the award of me, the said A. B. Now, Operative  
know ye that I, the said A. B., having taken upon part.  
myself the charge and business of the said award,  
and having been attended by the said parties and  
their respective attorneys, and having heard the al-  
legations and proofs of both the said parties and their  
respective witnesses, concerning the several matters

<sup>a</sup> See Arbitration Bond, *post*.

Direction of  
award.

referred to me, do find, award, order, and determine in manner following; (that is to say,) First, I do find, award, order, and determine, that there is justly due and owing to the said C. D. from the said A. B. the sum of L. ; and I do award, order, and direct, that the said C. D., his executors or administrators, shall and do well and truly pay, or cause to be paid, to the said C. D., his executors or administrators, on, &c., between the hours of, &c., at, &c., the said sum of L. of lawful money of Great Britain; and I do further award, order, and direct, that each of the said parties shall pay his own costs, charges, and expenses of the said bonds of arbitration, and of his witnesses, and all matters whatsoever attending and incidental to the said reference, and that the costs and charges attending this my award shall be paid equally between them. And I do further award, order, and direct, that, upon payment of the said sums of L. to the said C. D. as aforesaid, they, the said C. D. and E. F., shall and do duly execute and deliver to each other, at the expense of the party requiring the same, mutual general releases in writing of all matters heretofore in difference between them, and so referred to me as aforesaid. [*Or say,*] "Of all and every action and actions, cause and causes of action, bills, bonds, covenants, debts, rents, specialties, controversies, claims, and demands whatsoever." [*Or shortly thus,*] "That after payment, &c., each of the parties, if required so to do, shall, at the costs and charges of the other of them, execute to the other of them a

\* Or thus: "That each of them, the said, &c., shall bear and pay his own costs incurred by him in and about the said submission and reference; and that the sum of L. , being the amount of the other costs attending the said submission and reference, and of making this award, shall be paid by the said C. D. to me, the said A. B., and that the sum of L. , being one moiety of the said sum of L. , shall, after such payment as aforesaid, be paid by the said E. F. to the said C. D."

release of the matters so referred to me as aforesaid."

*An Award by an Umpire.*

To all, &c., I, J. P., the younger, of, &c., gent., send greeting. Whereas P. Q., of, &c., of the one part, and A. B. and C. D., of, &c., and copartners, on the other part, have mutually entered into and reciprocally executed bonds or obligations to each other, bearing date, &c., in the penal sum of L. , conditioned that, &c., so as the said award of the said arbitrators should be made on or before, &c.; but if the said arbitrators should not make such their award of and concerning the said differences and disputes by the time aforesaid, then, if the said parties in dispute should in all things well and truly stand to, abide, observe, perform, fulfil, and keep the award, order, arbitrament, umpirage, final end and determination of such person as should thereafter be chosen by the said arbitrators between the said parties, of and concerning the said differences, so as the said umpire shall make his award or umpirage of or concerning the same on or before, &c. And whereas the said R. S. and B. W. met upon the said arbitration, and did not make their award between the said parties by the time limited in and by the conditions of the said bonds; and in pursuance of such conditions have, by a note or writing under their hands, bearing date , chosen and appointed me as umpire to settle and determine the matters in difference between the said parties. Now know ye, that I, the said J. P., the umpire named and chosen as aforesaid, having taken upon me the burden of the said arbitration, and having heard and examined, as well the said parties as their respective attorneys or solicitors, and their respective witnesses, proofs and allegations on both sides, of and concerning the said disputes and differences between them, and fully considered the same and the matters to me referred, do make this my award and umpirage in

Recital of bonds.

Recital that arbitrators met, but did not make their award.

The award.

manner following ; (that is to say,) I do, &c. (See preceding forms.) In witness, &c.

*Observations on Awards.*

Notice of  
award being  
made.

When the award is made, the arbitrators should give notice to the parties or their attorneys of the same being ready. The original award is generally delivered to the party in whose favour the same is made, and a copy delivered to the other, unless particularly required. The notice is deemed the publication of the award. (*Musselbrook v. Dunkin*, 9 Bing, 605.)

The recitals  
requisite in  
the award.

The recitals in the award of the submission should set forth so much of its substance as may be requisite to show the authority of the arbitrator or umpire, with respect to the subject-matter of reference. If bonds, the recital of each may be separate, thus :

Form of re-  
cital by bonds.

"Whereas A. B., of, &c., by a bond dated the, &c., under his hand and seal, became bound to C. D., of, &c., in the penal sum of L. ; and the said C. D., by another bond, dated, &c., in the like penal sum, with conditions written under the same several bonds," (setting out so much of the submission as relates to the award, and state the enlargement, if any.) If it be by indenture, it may be after this

By indenture  
of enlarge-  
ment.

manner : "Whereas, by an indenture bearing date, &c., and made between, &c., after reciting, &c. ; and whereas, by an indorsement on the said, &c., bearing date, &c., and under the hands of all the parties to the said, &c., they the said parties mutually and reciprocally consented and agreed that the time for the said arbitrator making his award should be enlarged to, &c., and that they would in all respects abide by the terms of the said," &c. If enlarged by the arbitrator under a power : "And whereas I, the said arbitrator, in and by two several indorsements on the said, &c., did, by a memorandum in writing under my hand, enlarge the time for making my said award until, &c., pursuant to the said recited power." If the submission was made under an order of *nisi prius*

If enlarged  
under a  
power.

at the assizes : " Whereas, at the assizes holden at, &c., in and for the county of, &c., on, &c., before, *nisi prius.* &c., (*style of the judge and court,*) on the trial of a cause wherein A. B. was plaintiff, and C. D. defendant, it was then and there ordered by the court, by and with the consent of the said parties, their counsel and attorneys, that, &c., (*according to the order,*) a verdict should be entered for the plaintiff for L. damages, subject to the award of the arbitrator thereafter named, and that it should be referred to the award, order, arbitrament, final end, and determination of me, A. A., of, &c., barrister-at-law, to settle all matters in difference between the parties." The operative part of a common award is thus : " Now *Forms of the operative part.* know ye, that I, the said, &c., having taken upon myself the burden of the said arbitration, and having heard and duly considered all the allegations and evidence of the said respective parties of and concerning the said matters in difference, and so referred as aforesaid, do make this my award in writing of and concerning the said matters in difference so referred, and do hereby award, order, determine, and direct, that," &c. : Or, if a reference by order, &c. : " Now, I, the said A. A., having taken upon me the burden of the said reference, and having examined upon oath all such witnesses as were produced before me by the said parties respectively, and having duly weighed and considered all the allegations, proofs, and vouchers made and produced before me, do award, order, and adjudge, that," &c.

## CHAPTER XVI.

### BILL OF SALE.

#### *Bill of Sale of Goods.*

THIS indenture, made, &c. [*Recite the contract for sale or mortgage,\* as the case may be.*] Now, this indenture witnesseth, that, in consideration of, &c., he, the said A. B., hath bargained, sold, and assigned, and, &c., unto the said C. D., his executors, administrators, and assigns, all the household furniture, goods, things, utensils, and other chattels mentioned and described in the schedule hereunto annexed,

\* If by way of security, recite the money due, and in consideration of the same assign the goods; and after the habendum add a proviso for making void the deed on payment of the money due; then add the warranty, and covenant for payment of the amount due, and for quiet enjoyment until default. Or the same may be assigned in trust to sell, and after retaining the money due to the creditor, (*the bargainee*), then in trust to pay the residue to the bargainor, his executors and administrators, with power to enter on the premises for effecting the sale; and add the usual warranty, which is much shorter, and equally as effectual as covenants, in regard to the right of possession and further assurance of the property. In fact, a warranty as to personal property (such as goods and chattels) is created by implication, for the purchaser of goods may have a satisfaction from the seller if the title prove deficient, although there be no express warranty. (See "Assignments," in trust to secure money; see also "Mortgages.")

[or which are now in, about, or belonging to the dwelling-house and premises of the said A. B., situate at ] and all the right, title, interest, and property of the said A. B. of, in, and to the said household furniture, and other chattels, hereby assigned, or intended so to be, unto the said C. D., his executors, administrators, and assigns, as his and their own proper goods and chattels. And the said A. B., for himself and his executors and administrators, all and singular the said goods and household stuff unto the said C. D., his executors, administrators, and assigns, against him, the said A. B., his executors, administrators, and assigns, and against all and every other person or persons whatsoever, shall and will warrant and for ever defend, by these presents; of which goods, &c., the said A. B. hath put the said C. D. in full possession, by delivering him one chair, in the name of all the said goods and chattels, at the sealing and delivery hereof.

Warranty.

In witness, &c.†

† The attestation may be as follows: "Signed, sealed, and delivered by the within-named (or above-named, as the case may be) A. B., (being first duly stamped,) and, at the same time, full possession of all and singular the goods, chattels, and effects, within-mentioned, (or above-mentioned,) to be bargained and sold, were given by the said A. B. to the said C. D., by the said A. B.'s delivering to the said C. D. one chair, in the name of the whole of the same goods and premises, in the presence of," &c.

*N. B.*—The possession of the goods and chattels must actually accompany and follow the deed, to make it available against creditors, except in cases where the deed being conditional or by way of mortgage, the retainer of possession by the assignor would be consistent with the terms of the assignment, but it would be valid as between the parties. (*Edwards v. Harbon*, 2 T. R. 587; *Dutton v. Morrison*, 17 Ves. 193; *Steel v. Brown*, 1 Taunt. 381.)



## CHAPTER XVII.

### BONDS.

#### *For Payment of Money.*

(Bond or obligation.)

KNOW all men by these presents, that I, A. B., of, &c., gentleman, am held and firmly bound to C. D., of, &c., Esq., in the sum of L. , (*double the condition*), of lawful money of Great Britain, to be paid to the said C. D., or his certain attorney, executors, administrators, or assigns; for which payment to be well and truly made, I<sup>a</sup> bind myself, my heirs, executors, and administrators, firmly by these presents, sealed with my seal, dated the      day of      in the      year of the reign of our Sovereign Lady Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, and in the year of our Lord 1840.

(Condition of a bond for payment of money.)

The condition of the above-written obligation is such, that if the above-bounden A. B.,<sup>v</sup> his heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, unto the above-named C.

<sup>a</sup> If two obligors, say: "We bind ourselves, and each of us binds himself, for the whole and every part thereof, our and each of our heirs," &c. If three or more obligors, say: "Our and each and every of our heirs," &c.

<sup>v</sup> If two obligors, say: "Or either of them, their or either of their heirs," &c. If three or more, say: "Or any or either of them, their, or any or either of their heirs," &c.

D.,<sup>\*</sup> his executors, administrators, or assigns, the full sum of L. , (*the actual sum borrowed,*) of lawful money of Great Britain, with interest for the same, after the rate of L. for every L.100 by the year, on the day of now next ensuing the date of the above-written obligation, without any deduction or abatement whatsoever,<sup>†</sup> then this obligation shall be void, or otherwise the same to be and remain in full force and virtue.

(Condition of a bond for payment of money.)

The condition of the above-written obligation is such, that if the above-bounden A. B., his heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, unto the above-mentioned C. D., his executors or administrators, the full sum of, &c., of lawful, &c., with interest for the same, after the rate of L. for every L.100 for a year, on the days and times and in manner following; (that is to say,) the sum of L. , part thereof, with interest for the same, after the rate aforesaid, on the day of next ensuing the date of the above-written obligation; the sum of L. , other part thereof, with interest for the same, after the rate aforesaid, on the day of then next following; and the sum of L. , residue thereof, with interest for the same, after the rate aforesaid, on the day of then next ensuing, and which will be in the year of our Lord 184 ; then this obligation shall be void; but if default shall be made in payment of any or

(By instalments.)

<sup>\*</sup> If two obligees, say: "Or either of them, their, or either of their executors," &c. If three or more, say: "Or any or either of them, their, or any or either of their executors," &c.

<sup>†</sup> It seems advisable to add, if the bond be accompanied by a warrant of attorney, "and which said sum is the same as is mentioned in a certain warrant of attorney, bearing even date with the above-written obligation, authorizing certain attorneys therein named to enter up judgment."

either<sup>7</sup> of the said several and respective sums of money, or any part thereof, with the interest thereof, or of any part thereof respectively, at the times and in manner above-mentioned and appointed for payment thereof respectively, according to the true intent and meaning of these presents, then this obligation is to remain in full force and virtue.

*Condition in a Bond to Bankers.\**

(Banker's  
bond for  
payment of  
advances.)

**Now**, &c., that if the said A. B., his heirs, &c., do and shall from time to time, and at all times hereafter, reimburse and fully pay and satisfy the said C. D. and E. F., or the survivor or survivors of them, and all and every other person or persons who shall or may become partner or partners with them, or either of them, in banking business, within *ten years* from the date hereof, all such sum and sums of money as they or any of them shall advance or pay, for or on account of their accepting, indorsing, discounting, paying, or satisfying any bill or bills of exchange, drafts, notes, orders, or other engagements whatsoever, which he, the said A. B., shall from time to time draw, or cause to be drawn upon them, or make payable at their said banking-house; and also all and every other sum and sums of money which they, the said, &c., and the survivors, &c., shall, within the period aforesaid, or otherwise, lay out, pay, or advance, or become in anywise liable to pay on the credit of the said A. B., or on his account, to any person or persons whomsoever; and also all such wages and allowances for advancing and paying such bill or bills, drafts, notes, acceptances, ad-

<sup>7</sup> If judgment should be entered up in default of any of the instalments, yet upon payment of so much as may be due, and costs, the court will relieve the obligor; but the judgment will be permitted to stand as a security for the other instalments. (*Coates v. Hewit*, 1 Wils. 80; *Collins v. Collins*, 2 Burr. 824.)

\* Recite that A. B. had a banking account with, &c.

vances, payments, engagements, and accommodations, not exceeding the sum of L.5000 in the whole, together with interest for such sum and sums of money as they or any of them shall from time to time advance, &c., and other expenses and commission as usually charged, and shall indemnify and save harmless the said, &c., and the survivors or survivor of them, the said, &c., then, &c.

Now,<sup>a</sup> &c., that if the said [*mortgagor*,] his heirs, executors, administrators, and assigns, do and shall well and truly pay, or cause to be paid, unto the said (*mortgagee*,) his executors, administrators, or assigns, the sum of, &c., on, &c., [*take this from the covenant in the mortgage deed, and if the condition of the bond is without recitals, say, "according to the tenor, true intent, and meaning of a certain indenture of, &c., bearing even date herewith, and made, or expressed to be made, between," &c.; but if the deed has been recited, which is the better way, say, "being the same days and times as are appointed in or by the said in part recited indenture of release, (or demise,) for the payment of the same,"*] and do and shall make all and every the said payments without any deduction or abatement whatsoever, (*as stated in the deed,*) then, &c.

Now, the condition,<sup>b</sup> &c., that if the above-bounden A. B., his heirs, &c., do and shall well and truly pay, or cause to be paid, unto the said (*mortgagee*,) his executors, &c., the said principal sum of, &c., with all

(A mortgage bond.)

(Condition of a bond from the purchaser of an equity of redemption to indemnify mortgagor.)

<sup>a</sup> Mortgage bonds are now rarely used, as they increase the expense without adding to the security.

<sup>b</sup> Recite the mortgage, and that "the principal sum of, &c., still remains due upon the said security, but that all interest for the same hath been paid up to," &c.; and recite the conveyance of the equity of redemption (and "reversion," if the mortgage was by demise) to the (*obligor*,) and that "the said (*obligor*) hath agreed to enter into the above-written obligation for payment of the said sum of, &c., and interest, and to indemnify the said (*mortgagor*) therefrom, in manner hereinafter mentioned."

(Condition of  
a bond from  
the purchaser  
of an equity of  
redemption  
to indemnify  
mortgagor.)

interest to grow due or become payable thereupon, in full satisfaction and discharge of the said in part recited mortgage, and the covenant therein contained on the part of the said (*obligee*) for payment of the same; and of and from the same, and every part thereof, and also all and all manner of actions, suits, claims, and demands whatsoever, as well in law as in equity, and otherwise, of, from, or by the said (*mortgagee*), his executors, administrators, or assigns, for or by reason or in respect of the same, or any part thereof, in anywise howsoever, and all costs, charges, damages, and expenses whatsoever, by reason or in relation thereto, do and shall well and effectually save harmless and keep indemnified him, the said (*obligee*), his heirs, executors, administrators, and assigns, henceforth and for ever; then, &c.

(Annuity  
bond.)  
Recital.

Whereas the said A. B., some time since, advanced and lent to the said C. D. the sum of, &c., of lawful money of Great Britain, which he, the said C. D., doth hereby admit and acknowledge. And whereas the said C. D. hath, in consideration of the sum of L.

so as aforesaid advanced to him by the said A. B., agreed to grant to the said A. B. one annuity or yearly sum of L.

Condition.

to be paid to him during the term of his natural life, at the time and in manner hereinafter mentioned. Now, the condition of the above-written obligation is such, that if the said C. D., his heirs, executors, or administrators, do well and truly pay, or cause to be paid, unto the said A. B. or his assigns, one annuity, or clear yearly sum of L.

of lawful money of Great Britain, by even and equal quarterly payments, on the 25th day of March, &c., in each and every year during the natural life of the said A. B., without any deduction or abatement whatsoever, the first of such quarterly payments to become due and be made on the 25th day of March next ensuing the date hereof; and also if the said C. D., his heirs, executors, or administrators, do and shall, within twenty-one days next after the decease of the said A. B., well and truly

pay, or cause to be paid, unto the executors or administrators of the said A. B. a proportional part of the said annuity of L. for the time which, at the decease of the said A. B., shall have elapsed of the quarterly payment thereof then growing due, without any deduction or abatement whatsoever; then this obligation shall be void and of none effect, or else to remain in full force and virtue. (Annuity bond.)

Whereas the above-named A. B. hath contracted and agreed with the above-bounden C. D. for the purchase of the sum of L. , to be paid to her, the said A. B., her executors, administrators, or assigns, in the event of E. F. departing this life in the lifetime of the said C. D., but not otherwise, at or for the price or sum of, &c. And whereas, in performance of the said recited contract, she, the said A. B., hath paid the sum of, &c., of lawful money of Great Britain, unto the said C. D., at or before the sealing and delivery of the above-written obligation, the receipt and payment whereof accordingly the said C. D. doth hereby accordingly acknowledge. And whereas, upon the treaty for the purchase of the said contingent sum of L. , it was agreed that the payment thereof should be secured by (among other securities) the bond of the said C. D. (Post-obit bond.) Recital.

<sup>c</sup> Where it is a loan, the recital may be thus: "Whereas the above-bounden (*obligor*) is in expectation of receiving a considerable sum of money and other property, upon the decease of, &c., his father. And whereas the said (*obligor*) is now of the age of years, or thereabouts; and the said father is of the age of, &c., or thereabouts, and in good health. And whereas the said (*obligor*) having occasion for the sum of L. to supply his immediate occasions, hath applied to the said (*obligee*) to lend him the same upon his entering into the above-written obligation, together with a warrant of attorney for entering up judgment, as hereinafter is mentioned." (As to the validity of these bonds, see *Wharton v. May*, 5 Ves. 27; *Lushington v. Waller*, 2 Hen. Black. 95; *Bernall v. Marquess of Donegal*, 3 Dow, 133; *Curting v. Marquess of Townshend*, 19 Ves. 628; *Murray v. Stair*, 2 Bar. and Cress. 82, 83; *Dow and Ryl*. 278.)

(Post-obit  
bond.)  
Condition.

Now, the condition of the above-written obligation is such, that if, in the event of the said E. F. departing this life in the lifetime of the said C. D., the said C. D., his heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, unto the said A. B., her executors, administrators, or assigns, within six calendar months next after the decease of the said E. F. aforesaid, in the lifetime of the said C. D., the sum of, &c., of lawful money of Great Britain; or in case the said C. D. shall happen to depart this life in the lifetime of the said E. F.; then, &c.

(Condition of  
an arbitration  
bond.\*)

Whereas certain differences and disputes have arisen, and are now depending between the above-bounden A. B. and the said C. D., respecting, &c.; and it has been agreed by and between the said A. B. and the said C. D. to refer the same to R. S. and T. W. as arbitrators, as also all and all manner of action and actions, cause and causes of action, suits, bills, bonds, specialties, judgments, executions, extents, quarrels, controversies, trespasses, damages, and demands whatsoever, both at law and in equity, or otherwise howsoever, which at any time or times heretofore have been had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed, or depending, by and between the said parties, with liberty to the said arbitrators to appoint, choose, and name an umpire. And whereas it hath been agreed that this submission shall or may be made a rule of her Majesty's court of, &c., at Westminster, pursuant to the statute in such case made and provided. And it has been further agreed, that the witnesses, as well of him, the said A. B., as of the said C. D., shall be examined on oath by the said referees or their umpire, as aforesaid, touching the matters in difference between the said parties. And that the costs, charges, and expenses, as well of preparing and executing these presents, as of the

Witnesses to  
be examined  
on oath.

\* See Agreements for Reference, p. 227.

reference hereby intended to be made, and of all costs, charges, and expenses incidental or relating thereto, (*and likewise the costs and charges of the said action,*) shall be in the discretion of the said referees, or the said umpire so to be elected as aforesaid, who shall, in their or his award or umpirage, order and direct by which of the said parties, or in what proportion between them, the same shall be borne, and when paid.<sup>4</sup> Now, the condition of

(Condition of an arbitration bond.)

Condition.

<sup>4</sup> The following are the usual indorsements :—

" We, the undersigned A. B. and C. D., the referees within-named and appointed, do hereby accept of the appointment as arbitrators, for the purposes therein expressed; and for the proceeding in the investigation of the matters in dispute and difference between the parties in difference within-mentioned, we appoint and fix to meet at the house of E. F., in, &c., by 11 o'clock in the forenoon. Witness our hands, this 1st day of May 184 ."

(Memorandum written on the bond of the acceptance of the appointment of arbitrators.)

" We, A. B. and C. D., the arbitrators within-named, by this memorandum in writing, under our hands, made before the entering upon the within-mentioned arbitration, do hereby nominate and appoint E. F., of, &c., the third arbitrator, to whom, together with ourselves, the within-mentioned matters in dispute between the parties within-named are referred, according to the tenor and effect of the within rule, or within-written bond, or obligation, or indenture."

(Memorandum of an appointment of a joint arbitrator, indorsed or written upon bond, or other instrument of arbitration.)

If the consent of the third person has not been obtained, add, " On condition that he do, within                  days from the date hereof, by some writing under his hand, consent to act therein accordingly."

" We, the undersigned A. B. and C. D., the arbitrators within-named, having considered of the said matters in difference between the said parties, and having heard what each of them had to offer and allege in his behalf, but not having agreed in opinion in relation to the same, so as to enable us to make an award between the said parties in difference, do hereby, in pursuance of the power and direction given to us by the within-written agreement, elect, nominate, and appoint E. F., of, &c., to be umpire between the said parties in relation to the matters in difference between them as aforesaid. As witness," &c.

A memorandum indorsed on bond of appointment of umpire by arbitrators, when one is not nominated in bond.

" Know all men by these presents, that we, the within-nam-



(Conditions of this obligation is such, that if the above-bounden C. D., his heirs, executors, or administrators, do and shall, upon his or their part and behalf, in all things well and truly stand to, obey, abide, observe, perform, fulfil, and keep the hereinbefore recited agreement, and the award, arbitrament, final end and determination of the said arbitrators, so as the said award be made in writing on or before, &c., (or on or before such other day not extending beyond the, &c., as the said arbitrators shall, by writing to be indorsed on these presents, from time to time appoint;) or if the said arbitrators cannot agree and determine the same premises, and do not make such their award by the time aforesaid, that then, if the

Enlargement of time by the parties in dispute. ed A. B. and C. D., do give and grant unto the within-named C. D. and E. F., until the day of now next ensuing, for making their award of and concerning the several matters and things to them referred, as within-mentioned; so that they make their award in writing under their respective hands and seals, ready to be delivered unto the said parties in difference on or before the said day of

In witness," &c.

The like by arbitrators.

"We, the undersigned arbitrators, by virtue of the powers given to us for this purpose, do hereby extend and enlarge the time for making our award until the day of now next ensuing.

In witness," &c.

Nomination of umpire by a separate instrument.

If the nomination of an umpire be by a separate instrument, it may be thus :

"To all to whom these presents shall come, &c. Whereas [here recite the bond, or instrument of arbitration,] and we, the said A. B. and C. D., having taken the matters so referred to us into our consideration, but not being able to agree in opinion concerning the same, have chosen E. F., of, &c., to be an umpire touching the premises. Now know ye, that, in pursuance of the power and authority so vested in us by the said hereinbefore in part recited agreement, we, the said arbitrators, do hereby elect, nominate, and appoint the said E. F. to be umpire between them, the said parties in dispute, in relation to the matters so in difference between them, and so referred to us as aforesaid. In witness," &c.

said C. D., his heirs, executors, or administrators, do and shall, upon his or their part and behalf, in all things well and truly stand to, obey, abide, observe, perform, fulfil, and keep the award, order, arbitrament, umpirage, final end and determination of such person as the said arbitrators shall elect, choose, and name as umpire, as aforesaid, (*which umpire is to be elected and chosen by the said arbitrators previously to their proceeding upon the said reference,*) so as the said umpire do make his award and umpirage in writing on or before, &c. ; then this obligation to be void, otherwise to remain in full force and virtue.

(Conditions of an arbitration bond.)

### *Observations on Arbitration Bonds.*

If an agreement or indenture has been entered in-  
to by the parties in respect to the submission, and  
the bond is for the performance of the award to be  
made in pursuance thereof, the instrument should be  
recited shortly thus: "And whereas they, the said,  
&c., by an indenture bearing even date with the  
above-written obligation, and made, or expressed to  
be made, between the said A. B. of the one part, and  
the said C. D. of the other part, have agreed to refer  
and execute mutual bonds for the performance of the  
award of the said, &c., with such condition to be  
thereunder written for making void the same as here-  
inafter is expressed."

By indenture and bond.

It is sometimes prudent to take a warrant of at-  
torney to confess, &c., as a collateral security, to  
compel the performance of an award as to the title  
of land, with a defeasance *that no execution shall be  
taken out* unless the arbitrator by his award should  
direct the defendant to yield possession, which, if the  
party directed so to do should refuse, the warrant of  
attorney, given as in ejectment, might be entered  
up, and possession obtained. (*See Chitty's Arch-  
bold*, p. 1023.)

As to real property.

A right of real property cannot pass by mere  
award, (*Marks v. Mariot*, 1 Ld. Raymond, 115,) but

a conveyance or release of land may be awarded, (3 Bl. Com. 16.) After the making of the award the submission is not revocable.<sup>o</sup>

**Submissions not revocable.** Before the recent act of 3d and 4th William IV., cap. 42, either party might have revoked his submission at any time before the making of the award, and before the submission was made a rule of court; but by the 39th section of that act, *it is enacted*, that submissions by rule of court shall not be revocable by any party *without leave of court*, but that the arbitrator may proceed with the reference, notwithstanding any revocation.

The death of any of the parties, before the award is made, in most cases,<sup>r</sup> determines the arbitrator's powers, unless it has been otherwise agreed.<sup>s</sup> A parol submission cannot be made a rule of court. (*Ansell v. Evans*, 7 T. R. 1; *Godfrey v. Wade*, 6 Moore, 488.) See Awards, p. 311.

## BAIL BOND.

**Recital.**

Whereas the above-bounden C. D. was on this, &c., taken by the said sheriff in the bailiwick of the said sheriff, by virtue of the Queen's writ of *capias* issued out of her Majesty's court of, &c., bearing date at Westminster, the, &c., to the said sheriff directed, and delivered against the said C. D. in an action on, &c., (*as the plea is*,) at the suit of A. B.; and whereas a copy of the said writ, together with every memorandum and notice subscribed thereto, and all indorsements thereon, was on the execution thereof delivered to the said C. D.; and whereas he is by the said writ required to cause special bail to be put in

<sup>o</sup> *Phipps v. Ingram*, 3 Dowl. P. C. 669.

<sup>r</sup> For some exceptions to this rule, see 3 Dowl. and R. 610; 4 Id. 741; 2 B. and C. 345; *Clarke v. Crofts*, 4 Bing. 143.

<sup>s</sup> *Toussaint v. Hartop*, 7 Taunt. 571; *MacDougall v. Robertson*, 2 Yo. and J. 11; 4 Bing. 143.

for him in the said court, within eight days after execution thereof on him, inclusive of the day of such execution. Now, the condition of this obligation is such, that if the said C. D. do cause special bail<sup>a</sup> to

<sup>a</sup> The following is the form of a bail-piece :—

“ In the, &c.

The first day of, &c., in the year of our Lord 1840,  
(*the day and year of taking bail.*)

— shire, (*to wit.*) A. B., of, &c., having been arrested by virtue of a writ of *capias*, is delivered to bail to C. D., of, &c., and E. F., of, &c., at the suit of G. H.

Oath for L.

I K., *Defendant's Attorney.*

L. M., *Agent.*

Taken and acknowledged conditionally, at, &c., }  
the day and year above mentioned, before me, }

N. O., a *Commissioner for taking bail.*”

*N.B.*—If in the Exchequer, the bail must sign their names, but not in the other courts. If in the Common Pleas, add, “each of the bail in L. ,” (*double the sum sworn to by plaintiff.*)

The affidavit of the due taking of bail is thus :

“ In the, &c., between, &c.

A. B., of, &c., maketh oath and saith, that the recognizance of the bail or bail-piece hereunto annexed was duly taken and acknowledged by, &c., (*the bail therein named,*) before R. S., gent., the commissioner, who took the same in this deponent's presence, the day of, &c., instant.”

*N.B.*—The above affidavit must not be sworn before the bail commissioner, (1 M. Clcl. and Yo. 149,) but before a commissioner of the court in which the action is brought, so that he be not the defendant's attorney.

The following is the common form of the affidavit of justification of bail, to be sworn before the bail commissioner :

“ In the, &c.

Between, &c.

C. D., of, &c., and E. F., of, &c., bail for the above-named defendant in this cause, severally make oath and say ; and first this deponent C. D. for himself saith, that he is a housekeeper, [*or freeholder, as the case may be,*] residing at, &c., aforesaid, and is worth the sum of, &c., (*double the amount indorsed for bail.*) over and above what will pay his just debts, and over and above every other sum for which he

Common form of affidavit of justification.

(Bail bond.) be put in to the said action in her Majesty's said court, as required by the said writ, then this present

is now bail. And this deponent, the said E. F., for himself saith, that," &c., (*similar to the first deponent.*)

See Rule, 19 Hil. T. 1832.

By adopting the following form of justification, the plaintiff, upon *excepting*, will (upon allowance of bail) have to pay costs.

"In, &c.

Between, &c.

Form of  
justification,  
(Rule 3, T. T.  
1831.)

A. B., of, &c., one of the bail for the above-named defendant, maketh oath and saith, that he is a housekeeper, [*or freeholder, as the case may be,*] residing at, [*describing particularly the street or place, and number, if any ;*] that he is worth property to the amount of L. , [*the amount required by the practice of the courts,*] over and above all his just debts ; [*if bail in any other action, add, "and every other sum for which he is now bail ;"*] that he is not bail for any defendant except in this action ; [*or if bail in any other action or actions, add, "except for C. D., at the suit of E. F., in the court of , in the sum of L. ; for G. H., at the suit of I. K., in the court of , in the sum of L. ;" specifying the several actions, with the courts in which they are brought, and the sums in which the deponent is bail ;*] that the deponent's property, to the amount of the said sum of L. , over and above all his just debts, [*and if bail in any other action or actions, "of all other sums for which he is now bail as aforesaid,"*] consists of [*here specify the nature and value of the property, in respect of which the bail proposes to justify, as follows :—*Stock in trade in his business of , carried on by him at , of the value of L. ; of good book-debts owing to him to the amount of L. ; of furniture in his house at of the value of L. ; of a freehold or leasehold farm, of the value of L. , situate at , occupied by ; or of a dwelling-house of the value of L. , situate at , occupied by ; or of other property, particularising each description of property, with the value thereof ;] and that the deponent hath for the last six months resided at [*describing the place or places of such residence.*]

Sworn," &c.

obligation to be void, otherwise to remain in full (Bail bond.) force and effect.

It is advisable, in some cases, for *each* of the proposed bail to make a *separate* affidavit.

The affidavit of justification should, if possible, be in the above form; for if the plaintiff excepts to the bail, he will, upon allowance thereof, have to pay the costs of justification; but not if the common affidavit of justification be made. (See Rule 3, T. T. 1831.)

## CHAPTER XVIII.

### COGNOVIT:<sup>1</sup>

IN the Q. B. (C. P. or Exch.) Between, &c.

I do hereby confess this action,<sup>k</sup> and that the plaintiff hath sustained damages to the amount of L. , (*the damages laid in the declaration*; but if before declaration, put the *real* debt,) besides his costs and charges, to be taxed by the master, (*or in the C. P., say, "by one of the prothonotaries;" or if the amount be agreed upon, say, "to the amount of L. ."*) And in case I shall make default in

<sup>1</sup> Cognovits and warrants of attorney, given after 1st October 1838, will be invalid, unless executed in the presence of an attorney attending on behalf, and at the request of the person executing the same, to inform him before the execution of the effect thereof, and also attested by the attorney, stating that he does so as such attorney; 1st and 2d Vict., cap. 110, sec. ix. *Mason v. Kiddle*, 9 Law, Jo. Ex. 37.

<sup>k</sup> If the action be brought for debt, the form will begin thus: "I confess the debt in this cause;" and put the damages at *one shilling*, whether before or after declaration filed.

If given after plea filed, say: "I do hereby agree to withdraw the plea [*or "demurrer"*] by me pleaded herein, and do confess," &c.

If to be paid by instalments, say: "by the following instalments; that is to say," stating the periods allowed for payment, "or any or either of them."

payment of the sum of L.                   , (*the real debt,*) being the debt in this action, together with the said costs, on the, &c., next, the plaintiff shall be at liberty to enter up judgment for the said sum of, &c., (*or "the said debt,"*) together with the said costs, and to sue out execution thereon for the (*said*) sum of, &c., (*the real debt,*) and the said costs; and also for the costs of entering up such judgment, and of suing out execution thereon, officers' fees, sheriffs' poundage, costs of levying, and all other incidental expenses; and I do hereby undertake not to bring any writ of error, or file any bill in equity, or do any other matter or thing to delay the said plaintiff from entering up his judgment and suing out execution thereon, as aforesaid.<sup>1</sup> Dated, &c.

## COGNOVIT IN EJECTMENT.

In the, &c. Between John Doe, on the several demises of L. M. and O. P., plaintiff, and Thomas Jones, defendant.

<sup>1</sup> The cognovit, if in the Q. B., or a copy, if in the C. P. or Exch., when given in a personal action, and an affidavit of the time of the execution thereof, must be filed with the clerk of the judgments, if in the Q. B., or in the C. P. with the prothonotary, within twenty-one days after its execution, to render it, or any judgment or execution thereon, valid as against the assignees of the defendant, if he should become bankrupt; (3 Geo. IV., cap. 39, sec. 3.)

The following is the form of the affidavit:

"In the, &c., between, &c., A. B., of, &c., maketh oath and saith, that he was present on the first day of March instant, and did then see C. D., the above-named defendant, sign the cognovit hereunto annexed, [*or in the C. P. or Exch., "a true copy whereof is hereunto annexed;"*] and the name (C. D.) appearing at the foot thereof, [*or if in C. P. or Exch., say, "at the foot of the original cognovit,"*] is of the proper hand-writing of the said C. D.; and that the names "A. B." and "G. H." appearing there as that of the witnesses to the signature of the said C. D., are of the proper hands-writing of this deponent and of the said G. H."

Affidavit of the signature of cognovit, in a personal action.



I do<sup>m</sup> hereby confess this action, and that the said John Doe is entitled to recover his term [*or terms*] yet to come of and in [parcels, as in the declaration of ejectment,] with the appurtenances, situate, &c., being the tenements in the declaration in this cause mentioned; and also that he hath sustained damage by reason of the trespass and ejectment [*or trespasses and ejectments*] in the said declaration mentioned, to the amount of one shilling, besides his costs and charges in this behalf, to be taxed by the master, [*or in C. P. by the prothonotary.*] And in case I shall make default in delivering up possession of the premises aforesaid, or in payment of the damages and costs as aforesaid, on the, &c., next, then the plaintiff shall be at liberty to enter up judgment for his term of and in the said premises, and for his said damages and costs, above acknowledged, as also for the costs of entering up such judgment, and of suing out execution. And that he shall also be at liberty thereupon forthwith to sue out execution for the same, together with sheriffs' poundage, costs of levy, and all other incidental expenses. And I do hereby agree not to bring any writ of error, or file any bill in equity, to delay the plaintiff in his proceeding. Dated, &c.

<sup>m</sup> If defendant has pleaded, say, "I do withdraw the plea by me pleaded in this cause, and do confess," &c.

## CHAPTER XIX.

### CONDITIONS OF SALE BY AUCTION.

THAT the premises shall be put up for sale in the several lots mentioned in the foregoing particulars, or in such other lots as shall be agreed upon at the time of sale, that the highest of two or more bidders shall be the purchaser; and if any dispute arise between the bidders, or between the auctioneer and any bidder, the lot in dispute shall be put up again at the sum last bid for the same before such dispute arose.

Usual first condition.

That no person shall advance less than L. at each bidding, or retract his or her bidding.

That the vendor's agents shall be entitled to bid once for each lot and no more.

Reserved bidding.

That the auction duty shall be paid in equal moieties by the vendor and purchasers.

Auction duty.

That the purchaser shall pay down immediately into the hands of the auctioneer his moiety of the auction duty, and a deposit of L.            per cent. in part of his purchase-money, and sign an agreement for payment of the remainder of his purchase-money unto the vendors on the       day of       , at       , at which time the purchase shall be completed, and the purchaser shall then have the actual possession, or be entitled to the rents and profits of the purchased premises, all out-goings up to that time being dis-

As to the times for the completion of purchase, &c.

### 336 CONDITIONS OF SALE BY AUCTION.

charged by the vendors; but if the purchase shall not be completed by the said            day of            , then the purchaser, from whatever cause the delay may have arisen, whether from the state of the title, or otherwise, shall pay to the vendors interest at the rate of L.5 per cent. per annum on the balance of his purchase-money, from that time, until the purchase shall be completed, but without prejudice to the right reserved to the vendors under the condition.

In sales under  
the Court of  
Chancery.

That the purchaser, immediately upon being so declared, do sign a contract to complete his purchase, and pay his purchase-money into court, to the credit of the above-mentioned causes, on or before the            day of            , and do procure, at his own expense, within one month from the day of sale, the usual report of his purchase and order confirming the same.

Ditto.

That the vendors shall be entitled to the rents and profits of, and shall pay all out-goings in respect of the said premises up to the day of            , from which day the purchaser shall be entitled to such rents and profits; and in case he shall not, from any cause whatever, have previously paid his purchase-money into court, to the credit of these causes, he shall pay interest at and after the rate of L.5 per cent. per annum on the whole of his purchase-money from the said            to the day of payment into court of his purchase-money; the interest-money, (if any,) together with the value of the timber, to be paid into court with the purchase-money of the said estate and premises, and the amount of the valuation of the timber to bear interest at and after the rate of L.5 per cent. from the said            day of            , if not paid on or before that day.

Ditto.

The purchaser shall at his or her expense procure the master's report of his or her being the purchaser, and the usual order for confirming the same, and shall also (under an order to be obtained at his or her expense) pay the purchase-money into the Bank

of England to the credit of the cause, on or before the 20th day of November next, at which time the purchase is to be completed; and if from any cause whatever the purchase-money shall not be paid in, or the purchase shall not be completed as aforesaid, the purchaser shall pay interest on the purchase-money at five per cent. per annum, until the same is paid, and the purchaser shall be let into possession, or be entitled to the receipt of the rents and profits, or a proportionate part thereof, from the said 20th day of November next.

(In sales under the Court of Chancery.)

That the vendor's title will commence with certain indentures of lease and release, bearing date , Limitation as to title. which being a period of years, it is stipulated that they shall not be called upon to produce any previous title to the said premises, or any lot thereof.

That the vendors will, within seven days from the day of sale, deliver an abstract of their title to the purchaser, and thereby deduce a good title to the premises agreeably to these conditions; and the purchaser shall, within fourteen days after the delivery of the abstract, signify in writing to the vendors' solicitor, his acceptance of, or objections to, or requisitions on the title, as deduced by such abstract, and that in default of his so doing, he shall be considered as having accepted the title; and every objection or requisition not taken or made, and so communicated within such period, shall be considered as waived, and in this respect time shall be deemed of the essence of the contract. But in case the purchaser or his solicitor shall within such period raise any objection to the title, the vendors, if they shall see fit, shall be at liberty to rescind the contract for the sale of the property, on repaying to the purchaser his deposit-money, without any interest, costs, or other charges; but this condition shall not prejudice the right of the vendors to compel the completion of the contract if they should prefer it.

As to abstract and objections to title.

That the vendors shall, at their own expense, make out an abstract of their title, and deliver the same to The same applicable to lots.

### 338 CONDITIONS OF SALE BY AUCTION.

each purchaser, or his or her solicitor, on or before the            day of           , and such purchasers shall signify his or her assent to or dissent from the title on or before the            day of            then next; and in case a safe and secure title cannot be made to the said premises, or any lot thereof, the deposit-money shall be returned to the purchaser of the lot to which a safe and secure title cannot be made out, together with interest at L.4 per centum per annum, and such purchaser shall accept the same in full satisfaction of all damages and demands whatsoever, and thereupon this sale shall be null and void.

As to evidence  
of title.

That on the examination of the title, all recitals, (except of deeds, copies of court roll, or other documents in the vendors' possession,) and all statements, or descriptions of parties, or properties respectively occurring in deeds, copies of court roll, or other assurances, or documents of title twenty years old or upwards, shall be accepted as sufficient evidence of the several matters or facts so recited or stated, or of the accuracy of such descriptions respectively, and no further evidence shall be required in support thereof, nor shall the vendors be required to identify the parcels with the title thereto, as shown by the abstract; and all outstanding terms for years, (whether assigned to attend the inheritance or not,) or other outstanding legal estates which do not appear to have been noticed on the various sales, and other dealings with the property which have occurred during the last twenty years, shall be presumed to have been satisfied and surrendered, or got in.

That recitals  
should be evi-  
dence.

That the statement by way of recital, or otherwise, in any deed or document relating to the title dated above twenty years previous to the day of sale, or of any fact relating to heirship, descent, marriage, pedigree, survivorship, intestacy, identity of property, or other such like fact or circumstance, shall be deemed and taken to be conclusive evidence of such fact, and no further evidence thereof shall be required.

As parts of the property now offered for sale were acquired under exchanges effected upwards of forty years ago, the vendors shall not be called upon to produce any title to such parts prior to the deeds of exchange.

As to land taken in exchange.

All recitals in deeds above forty years old shall be taken as evidence of the facts recited, and the purchaser shall not be entitled to call on the vendors for any further proof, nor shall the purchasers be entitled to call for the production of any deed or other documents covenanted to be produced in any deed dated upwards of forty years prior to the day of sale, and all attested, and other copies of, or extracts from, any deeds, wills, or other documents, and all deeds of covenant for the production of deeds and other documents, and all assignments, or surrenders of terms already assigned to attend the inheritance, shall be made, procured, or obtained at the expense of the purchaser.

General condition as to title and completion.

That all attested, official, and other copies or extracts of deeds, [copies of court roll, letters of attorney for the surrender of copyhold premises,] wills, or other documents, and also all certificates of baptisms, marriages, and burials, called for by the purchaser's solicitor, and not in the vendors' possession, either for verifying the abstract or otherwise; and also the conveyance or assignment of any outstanding legal estate or interest in the premises, or any part thereof, shall be made and obtained at the expense of the purchaser.

As to costs of copies, &c.

That the conveyances of the several [freehold] lots, and the assignments of all terms of years therein, whether already assigned to attend the inheritance or not, shall be prepared by the purchasers' own solicitors, at the expense of each purchaser, and shall be approved of and executed by the vendors, and all other proper and necessary parties, at the like expense of the respective purchasers, and shall be delivered to them on payment of the remainder of the purchase-money, according to the condition;

Expense of conveyances.

# 340      CONDITIONS OF SALE BY AUCTION.

and each lot shall be conveyed to the purchaser thereof, subject to the several stipulations, charges, and incumbrances affecting the same, as are mentioned in the foregoing particulars.

Indemnity  
against an  
annuity.

That the purchaser shall accept the vendors' bond of indemnity (to be prepared by, and at the expense of, the vendors) in the penalty of L.100, against a life annuity of L.                      , charged, amongst other premises, upon lot 5.

As to a foot-  
path.

That lot 6 is sold subject to such foot-paths or rights of way through, over, and across the premises therein comprised, as are delineated and set forth in the map or plan annexed to the particulars thereof.

Inspection of  
deeds, and ex-  
pense of cer-  
tificate.

That the title-deeds relating to the said premises shall be produced for the inspection of each purchaser, or his or her solicitor, at the office of Mr.                      ,

but each purchaser must pay the expense of his or her solicitor inspecting the same, and if any or either of the purchasers shall be desirous of examining any deeds or other documents not in the possession of the vendors, or of inspecting any wills or letters of administration, or searching any registers of marriages, baptisms, or burials, or of obtaining any official copies, abstracts, or extracts therefrom, or any deeds of covenant for the production of title-deeds, or any attested or other copies of deeds, or of obtaining any particulars or information whatsoever relative to the title to any or either of the said lots, not in the possession of the vendors, the same shall be made and obtained by and at the expense of the purchaser desiring the same.

As to allot-  
ments in  
right of com-  
mon.

That all allotments in lieu of right of common, or otherwise, shall be taken to have been regularly and duly made, and that the vendor shall not be required to produce any further title to such rights of common [or other lands for which such rights of common were made] than what appears on the abstract.

As to title-  
deeds, and  
expense of as-  
signment of  
terms.

In cases where the title-deeds, or any of them, relate to more than one lot, the purchaser of the largest part of the property comprised in such deeds, if all

the property therein comprised shall be sold, shall have the custody of such deeds; or, if all shall not be sold, the vendor shall retain the custody, and such purchaser of the largest part, or the vendors, as the case may be, shall enter into the usual covenants, (to be prepared by, and at the costs of, the party requiring the same,) for production and delivery of copies of such deeds to the other purchaser or purchasers, and all deeds of covenant for production of deeds and documents, and all attested copies which may be required, and all deductions and acts for deduction of title to satisfied terms of years, already assigned to attend the inheritance, and all assignments of such terms, to be at the expense of the party requiring the same.

That, as the title-deeds relating to the said premises concern the title to other estates of the vendors of greater value, such title-deeds will be retained by them, and they will, at the expense of the respective purchasers, enter into the usual covenants with them for the production and safe custody of such title-deeds; and to furnish attested and other copies, and abstracts thereof, at the like expense of the purchasers, when thereto required; and if the purchaser of any lot shall require attested or other copies of all, any, or either of such title-deeds at the time of completing his or her purchase, the same shall be made out by the vendors' solicitor at the expense of the person requiring the same. Ditto.

That, as the vendors, and those under whom they claim, have been in possession of the said premises now offered for sale for upwards of                      years, it is stipulated that the same shall be sold and conveyed by the modern names and quantities as set forth in the plan produced at the time of sale; and that the vendors shall not be compelled to identify the ancient description mentioned in the title-deeds with the names and quantities mentioned in the said plan, further than as such names and quantities may happen to agree. As to length of title, and identity.



## 342      CONDITIONS OF SALE BY AUCTION.

- As to gates, ways, &c.**      That the purchaser of each lot shall make, maintain, and keep in repair all the gates, fences, and roads belonging thereto, in such proportions and manner as are set forth under each lot in the foregoing particulars ; and also pay all such land-tax and chief-rent as are set forth under each lot.
- Timber.**      That the timber and timber-like trees now growing on each lot, down to the value of 5s. per stick, shall be taken to by the purchaser, according to a valuation to be set thereon by Mr.      ; such valuation to be made on or before the      day of      , and the amount thereof shall be paid to the vendors at the time of completing the purchase, over and above the purchase-money.
- As to errors in sales by the court.**      That if any error shall be discovered in the particulars of the property, such error shall not annul the sale ; but a reasonable compensation or allowance shall be given or taken, as the case may require, such compensation or allowance to be settled and fixed by the master, if the parties differ about the same.
- The like in other cases.**      That if any mistake be made in the description of the premises, or any error whatsoever shall appear in the particulars thereof, such error or mistake shall not annul the sale ; but the vendors or the purchasers, as the case may happen, shall pay or allow such compensation as shall be fixed by proper arbitrators, one to be appointed by the vendors, and the other by the purchasers ; and, if such arbitrators disagree, then by a third person, to be named by them as umpire.
- As to fixtures.**      That the purchaser shall, at his option, within three days from the day of sale, signify to the auctioneer in writing, whether he will take the furniture, fixtures, and all out-door and in-door effects, not belonging to the freehold, and which are set forth in an inventory, which will be produced at the sale, at the sum of L.600, and if he declines taking the same in either of these modes in addition to his purchase-money, or by a valuation in the usual manner, then the fixtures only shall be valued by two indifferent persons, or their umpire, and paid for by the purchaser at the

time he completes his purchase, and in that case the vendors reserve the right of selling the furniture and other effects by auction in the mansion, previously to the of .

That if the purchaser [of any lot] shall neglect or refuse to comply with these conditions, his or her deposit-money shall be actually forfeited to the vendors, who shall be at liberty to resell the lot or lots bought by the person or persons so neglecting or refusing to comply with these conditions, either by public auction or private contract, or otherwise, as the vendors shall think proper, and the deficiency (if any) occasioned by such second sale, together with all charges and expenses attending the same, shall, immediately after the same sale, be made good to the vendors by the defaulter at this present sale; and, in case of non-payment of the same, the whole shall be recoverable by the vendors as and for liquidated damages, without the necessity of the vendors' first tendering<sup>a</sup> a conveyance to such defaulter.

Concluding condition.

By order of the Court of Chancery for the purpose, the vendors are entitled to have one bidding for each of the lots.

*N.B.*—This being a sale by the direction of the Court of Chancery, there will be no auction duty, and no deposit is required, and the fees of sale will be paid by the vendors.

Memorandum where the sale is under the court.

PECULIAR TO LEASEHOLDS.

That the purchaser shall have a proper assignment of the premises at his own expense on payment of the remainder of the purchase-money, but he shall not be entitled to call for the production of the lessor's

As to lessor's title, and surrendered leases.

<sup>a</sup> This is generally inserted, but a vendor is not bound to tender a conveyance; *Baxter v. Lewis*, 1 Fore. 61; *Webb v. Bethel*, 1 Lev. 44.

title, nor shall require the deduction of title to any surrendered lease, which may be referred to in the subsisting lease.

As to surrendered leases.

That as the premises are leasehold, for three lives under A. B., (with livery and seisin indorsed thereon,) it is hereby stipulated, that the title of the said A. B. shall be admitted, and that the vendors shall not be required to produce the same, or give any particulars thereto, and, as it is the practice on the renewal of leases to deliver up to the said A. B. the former leases on receiving new ones, the vendors can only undertake to produce to the purchaser of the said premises the last renewed lease, but a good title shall be made by the production of examined copies of the books of the said A. B., of leases granted of the said premises in regular succession for the last sixty years.

As to the assignment.

That the purchaser shall have a proper assignment of the premises at his own expense, on payment of the remainder of the purchase-money, but he shall not be entitled to call for the production of the lessor's title, nor shall require the production of or the deduction of title to any surrendered lease which is referred to in the subsisting lease.

Indemnity against rent.

That each of the respective purchasers shall, on the completion of the purchase, at his own expense, execute to the vendor a bond for the sum of L. , conditioned for indemnifying the vendor against the rent and covenants of the lease, in respect of the premises purchased by and assigned to such purchaser.

Apportionment of rent.

That inasmuch as both the messuages now offered for sale are included in one lease, subject to an entire rent of L. , the purchaser of each lot shall enter into a covenant with the purchaser of the other lot, for the payment and performance of his (the covenantor's) proportion of the rent and covenants, and give to such other purchaser a power of distress upon the premiums purchased by the covenantor, as an indemnity against such proportion; of which deed

of indemnity two parts shall be executed, and the same shall be prepared at their joint expense.\*

\* If it be intended that the purchaser shall pay for all copies, extracts, &c., *not in the possession of the vendor*, add here, "all attested, official, and other copies, or extracts of deeds, wills, or other documents, or assurances, not in the possession of the said vendor, and all certificates or copies of parochial or other registers, or evidence as to pedigree, which may be required by the purchaser, for the purpose of examination, or of verifying or proving the abstract, or any act, fact, matter, or thing therein, or in the deeds or assurances contained therein, set forth, stated, or recited, or otherwise, or for any other purpose, and all deeds of covenants or assignments of terms, or documents affecting the same, (*should any such be necessary*,) which shall be required by the purchaser, shall respectively be made and obtained at his expense." Or thus: "Abstracts of title will be prepared at the vendor's expense; but all conveyances and other assurances, and all attested or other copies that shall be required, either for the purpose of verifying the abstract or otherwise, are to be at the purchaser's expense." And if it be intended that the vendor shall not be bound to prove the recitals of old deeds, add: "All recitals in title-deeds made more than [—] years ago, of births and marriages, heirships and descents, shall be accepted by the purchaser as an evidence of the facts so recited, without the vendor being liable to the production of certificates and pedigrees, or other documentary evidence in support thereof." As to copies and extracts.

According to the case of *Fort v. Clarke*, 1 Russell, 601, recitals in old deeds are not evidence of facts unless properly corroborated; therefore, in the absence of the above stipulation, the vendor would be compelled to furnish such evidence.

When there are allotments made in right of common, to be taken to without investigation, add the following: "That all allotments in lieu of right of common, or otherwise, shall be taken to have been regularly and duly made, and that the vendor shall not be required to produce any further title to such rights of common [or other lands for which such rights of common were made] than what appears on the abstract." As to allotments in right of common.

If the premises are leasehold, add: "That as to such parts of the property as are leasehold, the vendor shall not

## PECULIAR TO COPYHOLDS.

As to the  
lives, and ex-  
pense of sur-  
render.

The vendors will warrant the lives in existence to the day of sale ; but the risk of any dropping after that day shall be upon the purchasers of this lot and lot 1, in the proportions after mentioned. That the expense of surrendering or taking the premises into court (whether at a general or special court) shall be paid by the vendors out of the said trust-estate ; but the costs and expenses of taking the same out of court shall be paid by the purchasers of this lot and lot 1, in proportion to the value of such of the premises contained in each of the said lots respectively, as are now comprised in certain copies of court roll of the 11th of October 1819 : such proportion, in case of dispute, to be settled by the bishop's steward for the time being. The extra costs of any special court shall be paid by the vendors and the purchasers of this lot and of lot 1, in equal proportions.

As to propor-  
tion of chief-  
rent.

That the premises comprised in the several lots shall be charged with such proportion of the chief-rents, fines for renewal, heriots, and other expenses, as is set down, under the same, in the foregoing particulars thereof.

be bound to produce any earlier title than the original lease, and shall not be required to show or be answerable for his lessor's title ; and if it appears that the vendor's title consists merely of an under-lease, such under-lease shall be the limit beyond which the vendor shall not be bound to produce any evidence of prior dealings with the property." (See p. 204.)

As to the  
period for  
deduction of  
title.

If it be intended to limit the time from which the vendor shall deduce the title, add : " The purchaser shall not be entitled to require or call for any title to the estate prior to the purchase-deeds, in the years, &c. ; nor will the vendor furnish any abstract of recitals in such deeds, but only to produce a title subsequent to the dates of the said deeds ; nor shall the purchaser be bound to identify the modern with the ancient descriptions of the parcels."

That the surrender of the premises, forming lots 1, 2, 3, and 4, held by the copies of court roll of the 11th day of October 1819, shall be made by the several lives to the lord, in order that the same may be re-granted to them in trust for the respective purchasers of lots 2, 3, and 4, respectively, according to the premises comprised in such several lots, and such copies of court roll; and the purchaser of lot 1 shall enter into covenants with the purchasers of lots 2, 3, and 4, to renew the several grants thereof, so as to keep the same respectively full lived, and pay the whole of the reserved or chief-rents, and the heriots, fines, and expenses attending every such renewal respectively; the purchasers of lots 2, 3, and 4, entering into covenants with the purchaser of lot 1, to repay to him the several proportions of the same several rents, heriots, fines, and expenses of and attending every renewal, stated under such lots in the particulars; and also the whole of any increase of the same in consequence of any buildings or improvements to be erected or made on either of the portions included in the above-mentioned copy of court roll, comprised in lots 2, 3, and 4, respectively; and in the same deeds of covenant, the purchaser of lots 2, 3, and 4, shall covenant to pay the same accordingly; and shall give to the purchaser of lot 1 the usual powers of entry and distress to raise and levy the same proportions and increase on the above portions of the premises comprised in lots 2, 3, and 4, respectively, if not paid within one calendar month, after notice in writing being given to them, him, or her, by the purchaser of lot 1, of every such renewal, and the amount required to be paid in consequence thereof. And until lot 1, and lots 2, 3, and 4, shall be sold, the respective covenants and powers of distress, above referred to, shall be entered into *by and with*, and given *by and to*, the vendors. All such covenants, &c., to be made by and at the expense of the parties entering into or giving the same.

As to renewal where property sold in lots.

That the timber, and timber-like trees, pollards, As to timber.

and saplings, now growing upon the premises, down to the value of 2s. 6d. per stick inclusive, shall be taken to by the purchaser, according to a valuation to be set thereon by two indifferent persons, one to be chosen by the vendors and the other by the purchaser; and in case of their disagreeing, then by an umpire to be named by such referees; such referees and umpire to be named on or before the 15th day of October next, and the valuation to be made on or before the 1st day of November next; and the amount thereof (after deducting the value of such proportionate part as the lord of the manor may be entitled to on any sale thereof) shall be paid to the vendors at the time of completing the purchase, over and above the purchase-money.

As to recitals,  
and expense  
of proving  
title.

Recitals and statements occurring in the surrenders, and admissions on the rolls, dated twenty years or more previously to the day of sale, shall be accepted as evidence of the matters recited or noticed, and the expense of obtaining any other matters of evidence, and of official, attested, and other copies, extracts, wills, judicial proceedings, probates, administrations, registers, proofs of intestacy, and of the production, and covenants for the production, of deeds which shall be required, either to perfect, verify, or accompany the abstract, or for any other purpose, and shall not be in the vendors' possession, and of getting in any outstanding legal estate, shall be borne by the purchaser.

As to loss of  
court rolls.

The vendors shall not be required to produce or account for the loss of any of the original copies of court roll relating to the property, and the expense of comparing the abstract with the court rolls (including the steward's fees) shall be borne by the purchaser.

Identity.

The purchaser shall not require the production of any evidence to identify the parcels with the modern description contained in the surrender to, and admission of, the late Mr. , in March 1816.

## CONDITIONS FOR THE SALE OF TIMBER. 349

### CONDITIONS FOR THE SALE OF TIMBER.

1. That the highest of two or more bidders shall be the purchaser, provided the sum bid shall not be less than a sum to be mentioned in a paper sealed up and laid upon the table, previous to the commencement of sale ; and if any dispute shall arise, the same lot shall be put up again for sale. Conditions.

2. That no person shall advance less than L. at each bidding.

3. That the purchaser [of each lot] shall immediately pay down a deposit of L.10 per cent. in part of the purchase-money, and pay the remainder on the day of 184 , as hereinafter mentioned.

4. That the purchaser [of each lot] shall enter into proper articles, agreeable to these conditions, at the joint expense of himself and the vendor, and also shall and will, within four days from this day, at his own expense, enter into a bond, with sufficient security, to be approved by the vendor, at his house in, &c., for payment of the remainder of the purchase-money, according to the third condition above-mentioned, and also for the performance of these conditions ; and until such security is given, the timber, trees, and other wood, and every part thereof, to be considered as the property of the vendor, whether fallen or not.

5. That the purchaser, his servants, and agents, shall have power to enter on the premises where the trees are growing, and shall, at his own expense, properly axe, fall, and cut down the said timber and other trees, and butt and top the same, on or before, &c., without doing any wilful damage to the saplings or other wood in the coppices, hedges, fences, or premises ; and stock the said timber and other trees, and get the roots and spurs out of the ground in a fair and workmanlike manner ; but such of the trees as grow on the banks of the brooks, gutters, or rivulets, to be axe-fallen in such a manner as the vendor shall



### 350 CONDITIONS FOR THE SALE OF TIMBER.

direct, so as to prevent the banks of the same from being broken or fallen in.

6. That the whole of the said ash-underwood shall be cleared off the said coppices and premises on or before the said            day of           , and the whole of the timber or other trees, bark, cordwood, and wood arising from the said timber-trees, shall be cleared off the said lands and premises, *by the usual and proper roads to the same*, on or before, &c. ; until which time the purchaser shall have the usual privilege of sinking sawpits, and getting turf in such places as shall be appointed by the vendor or his agent for that purpose, for converting the said timber, and coaking the cordwood, not doing any wilful damage to the saplings or other wood growing on the said coppice and premises ; such sawpits, so to be made as aforesaid, shall be properly fenced or covered, and shall, immediately after the converting of such timber, be filled up at the expense of the purchaser, except as hereinafter mentioned ; and such of the ash-underwood, or other trees, cordwood or other wood, as is, are, or shall be then remaining on any part of the said lands and premises, shall be forfeited to the said vendor, as and for a compensation for such damage as shall be occasioned thereby.

7. That the said purchaser shall, within three days after the same shall be fallen, cause the boughs and tops of the said timber and other trees to be cut off and laid on the bodies thereof, or under the hedges and fences, so that as little damage as possible may be done to the crops of grain, and shall not work nor carry away any part of the said timber or other trees till after such crops of grain are cut or carried, except the bark of such timber or other trees which the purchaser shall carry away without taking any horse or carriage on such crops for such purpose.

8. That the purchaser shall allow five stakes for every tree fallen in the hedge-rows or fences, to make up the gaps in the said fences where such trees are so fallen as aforesaid ; and also a full compensation

# CONDITIONS FOR THE SALE OF TIMBER. 351

for all damages sustained in falling such ash-underwood, timber, and other trees, (except such as are necessary and reasonable.)

*Lastly*, That if the purchaser shall refuse or neglect to perform the several conditions hereinbefore stated, the deposit-money shall be forfeited to the vendor, who shall be at liberty either to enforce the present contract, or to re-sell the timber or other trees, as aforesaid, by public auction or private contract; and the deficiency, if any, of such second sale, together with the charges attending the same, shall be made good by the defaulter at this present sale.<sup>p</sup>

<sup>p</sup> Memorandum that C. D., of, &c., became and was this day declared the highest bidder of the \_\_\_\_\_, mentioned and comprised [in or as lot 1] in the foregoing particulars, at the sum of L. \_\_\_\_\_. Now therefore the undersigned A. B. doth hereby agree to sell unto the said C. D., and the said C. D. doth hereby agree to purchase the same, under the terms and conditions aforesaid, at and for the said sum of L. \_\_\_\_\_; and at the same time the sum of L. \_\_\_\_\_ was paid to the said A. B., as the deposit-money for the same. As witness, &c.

Memorandum of purchase, to be signed by vendor and purchaser.

Mr. A. B., auctioneer,

Take notice—that I, the undersigned A. B., of, &c., the proprietor of the \_\_\_\_\_, advertised to be sold by auction this day by you, at, &c., have appointed Mr. C. D. to bid for the same, and that if he shall buy in the same premises at such sale, it will be solely on the account and for the use of me, the said A. B., the owner thereof. Dated, &c.

Notice to the auctioneer of the appointment of a bidder to buy in premises of the owner.

Witness, &c.

Mr. A. B., auctioneer,

Take notice—that I, the undersigned C. D., have accepted the above appointment, and that if I shall bid for or buy in the abovementioned premises advertised to be sold by auction by you this day, the same will be bid for, purchased, and bought in by me, for the sole use of the said A. B., as the owner or proprietor thereof. Dated this \_\_\_\_\_ day of \_\_\_\_\_ 1840. Witness, &c.

Notice to be signed by the person appointed to buy in the premises.

## CHAPTER XX.

### CONVEYANCES.

#### LEASE AND RELEASE.

*Lease (or Bargain and Sale for a Year) whereon  
to ground the Release.*

<b>Parties.</b>	<p>THIS indenture, made, &amp;c., between A. B., of, &amp;c., of the one part, and C. D., of, &amp;c., of the other part,<sup>1</sup> witnesseth, that, in consideration of the sum of 5s. of lawful money of Great Britain, by the said C. D. to the said A. B. in hand well and truly paid, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he, the said A. B., hath bargained and sold, and by these presents doth bargain and sell, unto the said C. D., his executors, administrators, and assigns, all, &amp;c., [<i>describe the parcels, with the general words, which should correspond with the release,</i>] and the reversion and rever-</p>
<b>Consideration.</b>	
<b>Parcels.</b>	

<sup>1</sup> As the lease and release constitute together one assurance, it is advisable, in most cases, to make all the conveying parties in the release parties to the bargain and sale on which it is founded.

sions, remainder and remainders, yearly and other rents, issues, and profits, of the same premises, with the appurtenances. To have and to hold the said, &c., hereby bargained and sold, or intended so to be, with their appurtenances, unto the said C. D., his executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during, and unto the full end and term of one whole year<sup>r</sup> from thence next ensuing, and fully to be complete and ended; [yielding and paying<sup>r</sup> therefore unto the said A. B., his heirs and assigns, the rent of one peppercorn on the last day of the said term, (if the same shall be lawfully demanded,)] to the intent<sup>t</sup> and purpose that, by virtue of these presents, and by force of the statute made for transferring uses into possession, he, the said C. D., may be in the actual possession of the said hereditaments and premises hereinbefore mentioned, and intended to be hereby bargained and sold, and every part and parcel thereof, with the appurtenances, and may thereby be enabled to accept and take a grant and release of the same, and of the reversion<sup>a</sup> and inheritance thereof

Habendum.

Reservation.

<sup>r</sup> If the conveyance should be a life-estate, add, "if the said A. B. (or *cestui que vie*) shall so long live."

<sup>t</sup> This reservation may be omitted, (if a money-consideration be inserted,) as this instrument is not properly a lease, but a bargain and sale raising a use, (by means of the consideration-money of 5s.,) which the statute of 27th Hen. VIII. transfers into possession; thereby enabling the bargainee to accept a release of the reversion.

<sup>a</sup> If the bargain and sale be of a reversion or remainder, say, "to the intent that, by force of the statute made, &c., the remainder in fee or reversion (as the case may be) expectant, &c., of and in the said hereditaments and premises may become actually vested in him, the said C. D.; and so that he, the said C. D., may be enabled to accept and take a release of the inheritance thereof to him, the said C. D., his heirs and assigns for ever," (or, to the uses, &c.)

<sup>b</sup> If a life-estate, say, "of the freehold and reversion to him, the said C. D., his heirs and assigns, during the life of the said," &c.

intended to be thereof made to him, the said C. D., his heirs and assigns for ever, [*or if to uses, say, to the uses, upon the trusts, and to and for such intents and purposes as shall be thereof declared and expressed in and by an indenture intended to bear date the day next after the day of the date of these presents, and to be made between, &c.,*] and to and for no other use, trust, intent, and purpose whatsoever. In witness, &c.

*Release from a Vendor to a Purchaser.*

Parties.

This indenture, made, &c., between, &c., [*recite the deed or will under which the vendor is entitled, or that he is seised, &c., and the agreement for sale.*]

Witnessing  
part.

Now, this indenture witnesseth, that, &c., (see Considerations, p. 36,) he, the said (*vendor*), hath granted, bargained, sold, aliened, released, and confirmed, and by these presents doth, &c., (in his actual possession, &c.,) and to his heirs and assigns, all, &c., (see Par-

▼ If the conveyance be by a man and his wife, of premises to which he is seised in her right, the granting part may be thus: "They, the said (*véndor*), and M. his wife, under and by virtue, and in pursuance of the powers and provisions given by and contained in an act of Parliament made and passed in the 3d and 4th years of the reign of his Majesty King Will. IV., intituled, 'An Act for the Abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance,' have, and on each of them hath," &c.

When the  
releasee is  
in possession  
under a de-  
mise or lease.

▼ If the releasee be a tenant in possession under a lease, the reference to the possession under the same may be added here thus: "Which said messuage, &c., hereby granted and released, or intended so to be, are now in the actual possession of the said (*releasee*), by virtue of a demise made to him by the said (*releasor*), by indenture bearing date, &c., for the term of seven years from the day of the date of the same indenture, and by force of an entry made by the said (*releasee*) pursuant to the same indenture." In this case the lease is perfected by entry; but under the lease for a year, operating as a bargain and sale, the possession is transferred, by virtue of the statute of uses, without entry.

cels, p. 39,) together with all houses, &c., and the Premises.  
 reversion, &c., and all the estate, &c.\* To have and Habendum.  
 to hold, &c., (see Habendum, p. 45; add covenants; Covenants.  
 for the title," (see pp. 14 and 85.) In witness, &c.

\* For general words, see p. 40. The clause of all deeds, &c., may be omitted. (Respecting this clause, see 1 Saund. on Uses and Trusts, 119; 2 Prest. Conv. 466; Noy, 145; Co. Litt. 6 a. n. 141; 1 Yo. and Jerv. 117; 3 Barn. and Cress. 225.)

' If the wife joins to convey or extinguish her dower, and in all cases where the wife joins, the first covenant should be by the vendor, "that these presents shall forthwith, at the costs of the (vendor,) be duly acknowledged by the said (wife;) she hereby consenting, and otherwise perfected by the solemnities prescribed by law for rendering the deeds of married women effectual to extinguish their interest in land."

If a reversion, &c., "to an indefeasible estate of inheritance in fee-simple in reversion or remainder expectant," &c. That vendor is seised.

If a life-estate, "to an indefeasible estate of freehold in possession, for and during the natural life of," &c.

If a moiety, &c., "to grant, release, and convey the said moiety, or said undivided part, &c., of and in," &c. That vendor has good right to convey.

If a reversion or remainder, "to grant, release, and convey the said reversion or remainder expectant, &c., as aforesaid."

If a life-estate, "for and during the natural life of," &c.

If a moiety, &c., "to enjoy the said undivided, &c., of and in the said," &c. For quiet enjoyment, free from incumbrances.

If a reversion, &c., "at all times hereafter, immediately upon the decease or other sooner determination of the estate for life of, &c., (or as the case may be,) peaceably to enjoy," &c.

If a life-estate, "to enjoy for and during the term of the natural life of," &c.

If a moiety, &c., "into or out of the said undivided, &c., of and in," &c. For further assurance.

If a reversion or remainder, "into or out of the same remainder or reversion hereditaments and premises aforesaid."

If a life-estate, "shall and will, from time to time, and at all times hereafter during the natural life of," &c.

\* Where the conveyance contains a power of appointment, the covenants should be with the releasee to uses in other

## APPOINTMENT AND RELEASE.

**Parties.** This indenture, made, &c., between, &c.\* [*Recite*  
**Recitals.** *the instrument creating the power<sup>a</sup> and the contract*  
**Appointment.** *for purchase, or as the case may be.*] Now, this indenture witnesseth, that, in consideration, &c., he, the said A. B., pursuant to, and by force and virtue, and in exercise and execution of the power or authority to him, — by the said hereinbefore in part recited indenture, for this purpose given and limited, doth, by this present deed or instrument in writing, by him sealed and delivered in the presence of the two credible persons whose names are intended to be hereupon indorsed, as witnesses to the sealing and delivery thereof, by him, the said A. B., direct, limit, and appoint, that the messuages, lands, hereditaments, and premises hereinafter described, and intended to be hereinafter granted and released, with their appurtenances, shall henceforth go, remain, and be, and the said last mentioned indenture shall, so far as concerns the same messuages, lands, hereditaments, and premises, be and enure.<sup>b</sup> To the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisions, agreements, and declarations hereinafter expressed and declared of and concerning the same. And this

cases with the cestui que use. The appointee on a subsequent sale would not become the assignee of the appointer, but of the releasees or feoffees to uses, and in the latter character would be entitled to the benefit of covenants entered into with them.

\* In consequence of the appointment overreaching the estate of the trustee of the vendor, he is not a necessary party.

<sup>a</sup> If the deed creating the power be not recited, it must be referred to in the operative part of the appointment.

<sup>b</sup> If it is intended, as in the present precedent, to give the appointee a power of appointment, his name must not be inserted here, as no uses can be limited upon his seisin, he himself being in under the statute.

indenture also witnesseth,<sup>c</sup> that, in further pursuance Release.  
of the said recited agreement, and for the considera-  
tion aforesaid, and for the further and better, assur-  
ing the said, &c., to the uses and in manner herein-  
after mentioned, [*or declared and contained,*] he,  
the said (*vendor,*) hath granted, bargained, sold,  
aliened, released, and confirmed, and by these pre-  
sents doth, &c., unto the said (*purchaser,*) in his ac-  
tual possession, &c., and to his heirs and assigns, all,  
&c., (see *Parcels*, p. 39.) [*Add the general words,* Parcels.  
*"with the reversion, and all the estate,"* &c.; *Ha-* Habendum.  
*bendum,*<sup>d</sup> *add covenants*<sup>e</sup> *for title*; see *ante*, pp. 41 Covenants.  
and 85.]

In witness, &c.

<sup>c</sup> In small purchases, the *release* may be omitted; for, unless there should be any informality in the appointment, the release will be useless. Formerly, taking by appointment was the better way, as the title was thereby discharged of the judgment-debts of the vendor; (*Doe v. Jones*, 10 B. and C. 457; *Skeeles v. Shearly*, 8 Sim. 153; 3 M. and Cr. 112;) but it is conceived, that, in consequence of the provision of the 1st and 2d Vict. c. 110, sect. 11, such a course would now be no protection to a purchaser.

<sup>d</sup> A declaration as to the uses may be added after the habendum, thus: "And it is hereby agreed and declared between and by the parties hereto, that as well the direction and appointment, as also the grant and release hereinbefore contained, shall operate and enure to the use," &c., (*or to such uses, &c.*)

<sup>e</sup> Where the purchaser was married before 1834, the pre- Limitation to  
mises should be limited "to such uses as he may appoint, purchaser to  
and in default thereof either to the use of the purchaser in such uses as  
fee, without a trustee, or with the usual limitation to him- he may ap-  
self for life, remainder to a trustee for his life, with remain- point, with  
der to himself in fee;" (see *Moreton v. Lees*, Sug. Powers;) remainder to  
and by these means the wife of purchaser may be defeated him in fee.  
of her dower, by the exercise of the power by the husband.  
(See *Ray v. Pung*, 5 Madd. 310; 5 Barn. and Ald. 568.)





*prevent dower*, (see p. 52, and notes to p. 357,) and add covenants\* for title ; see *ante*, p. 14 and 85.]

In witness, &c.

\* If a power of attorney be added to deliver seisin, it may be thus : " And the said (*vendor*) hath made, ordained, constituted, and appointed, and by these presents doth, &c., R. S., of, &c., and T. V., of, &c., [if the attorneys are not parties to the deed, which they need not be, they should be described here,] his true and lawful attorneys jointly, and either of them severally, for him and in his name, into the said, &c., hereby granted and conveyed, or intended so to be, or into some part thereof, and in the name of the whole, to enter, and full, quiet, and peaceable possession and seisin thereof, for him and in his name, to take and have, and such possession and seisin thereof, or of some part thereof, in the name of the whole, unto the said (*feoffee*,) or to his certain attorney or attorneys in that behalf, to give and deliver ; to hold to him the said (*feoffee*,) his heirs and assigns for ever, [or, to the uses, &c., hereinbefore expressed,] according to the true intent and meaning of these presents ; thereby ratifying, confirming, and allowing, and agreeing to ratify, confirm, and allow, all and whatsoever his said attorneys, or either of them, shall do in the premises." Power of attorney to deliver seisin.

If a power of attorney be added to receive seisin, it may be thus : " And the said (*purchaser*) hath, &c., for him and in his name and stead, to take and receive of and from the said (*vendor*,) either in person or by his attorney lawfully authorized in that behalf, possession and seisin of all and singular the said, &c., or of some part thereof, in the name of all the same, &c. ; and such possession and seisin so taken thereof, to hold and keep, to the use of the said (*purchaser*,) his heirs and assigns, according to the true intent and meaning of these presents." Power of attorney to receive seisin.

*N. B.*—If livery be made of a house, the feoffor takes the key, and puts it into the hand of the feoffee, at the same time saying, " I do hereby deliver possession and seisin of this house, according to the tenor and effect of this deed." If the feoffment be of lands, it is usual to deliver a turf or twig thereon. (See Co. Litt. 48.)

If of divers lands of vendor, situate in one county, and being in the feoffor's possession, livery and seisin of a parcel is sufficient for all, (Litt. s. 61 ; ) but if the lands lie in several

## DEED OF GIFT.

Parties.	This indenture, made, &c., between ( <i>the donor</i> ) of the one part, and ( <i>the donee</i> ) of the other part. [ <i>Recite that the donor is seised or entitled.</i> ] Now, this
Testatum.	indenture witnesseth, that, [ <i>if a relation, say,</i> ] in consideration of the natural love and affection which the said ( <i>donor</i> ) hath and beareth unto the said ( <i>donee</i> ), [ <i>and if a son or daughter,</i> ] and also for the better maintenance, support, livelihood, and preferment of the said ( <i>donee</i> ), [ <i>or, if a stranger, say,</i> ] in consideration of the esteem and regard which the said ( <i>donor</i> ) hath for him, the said ( <i>donee</i> ), he, the said ( <i>donor</i> ), hath given, granted, released, and confirmed, and, &c., doth, &c., unto the said ( <i>donee</i> ), (in his actual possession, &c.) and to his heirs and assigns, all, &c., and the reversion, &c., and all the estate, &c., and all deeds, &c. Habendum, (either in fee, or to prevent dower. See p. 32.) [ <i>Add a covenant for peaceable enjoyment.</i> See p. 87.] In witness, &c.
Grant.	
Habendum.	
Covenants.	

## GIFT OF FURNITURE.

“ Know all men by these presents, that I, A. B., of, &c., for and in consideration of, &c., do give, grant, and confirm to the said C. D. all and singular the household goods, furniture, beds, bedding, china, linen, glass, books, pictures, and all and singular

counties, there must be as many liveries as there are counties. (2 Black. Com. 315.)

If the lands are in the possession of several tenants, there must be several liveries, because each particular tenant must consent. (Dyer, 18.)

A livery in law may be made by being in sight of the land only, and by the feoffor saying, “ I give you yonder land; enter and take possession ;” but this livery cannot be given or received by attorney. And if entry is not made in the life of both the parties, the livery will be void. (Co. Litt. 52, b.)

other the goods, chattels, and effects mentioned and described in or by the inventory or schedule thereof hereunder written, [or hereunto annexed,] to hold the same personal estate and effects unto the said C. D., his executors, administrators, and assigns, for his and their use and benefit." [Add a warranty, and indorse a memorandum of the possession of the goods being delivered, as in *Bill of Sale*, p. 317, n.]

#### GRANT OF A REVERSION<sup>b</sup> OR REMAINDER.

This indenture, made, &c., between (*the vendor*) of Parties. the one part, and (*the purchaser*) of the other part, [recites a settlement whereby the hereditaments were li- Recital. mited to A. B., during his life, with remainder to trustees for a term of years, to raise portions for the younger children of the marriage, with remainder to the first and other sons of the marriage in tail, with remainder to the use of the (*vendor*) in fee.] And whereas there is at present no issue of the marriage, nor is there any prospect of the said (*vendor*) having any children by his said wife. [Then recite the contract for the purchase of the reversion or remainder of him, the said (*vendor*), expectant as aforesaid, at or for, &c.] Now, this indenture witnesseth, that, in pursuance of the said agreement, and in consideration of, &c., the receipt, &c., he, the said<sup>1</sup> (*vendor*),

<sup>b</sup> A reversion is a future estate, which the grantor or testator limits to himself or his heirs, or which, being undisposed of, results to him by operation of law. The proper mode of passing a reversion or remainder is by grant; but a lease and release is the more common and preferable assurance, as it renders unnecessary any proof of the existence of the prior estate at its execution. (2 Prest. 83, 84, 85.)

<sup>1</sup> If the grant be of tithes, say: "He, the said (*vendor*), doth by these presents grant, bargain, and sell, release, ratify, and confirm unto the said (*purchaser*), his heirs and assigns, all those the tithes or tenths of corn and grain, and also all other the tithes and tenths, of what nature or kind

hath, &c., and by these presents doth grant, bargain, sell, release, and confirm unto the said (*purchaser*,) his heirs and assigns, all that the reversion or remainder of him, the said (*vendor*,) expectant upon, and to take effect in possession, immediately from and after the decease, or other sooner determination of the estate, for life of the said, &c.; and on failure of the issue of the body of the said, &c., as aforesaid, of and in all,<sup>k</sup> &c., and all the estate, &c. Habendum, (see p. 45.) [*Add covenants that vendor is seised of, or entitled to the reversion, &c.; that he hath good right to grant; free from incumbrances; and for further assurance, p. 85.*]

In witness, &c.<sup>l</sup>

#### GRANT OF A PEW.

This indenture, made, &c., between (*vendor*) of the one part, and (*purchaser*) of the other part.

soever, of him, the said (*vendor*,) yearly or otherwise coming, growing, renewing, increasing, or arising from, by, and out of all that, &c., situate, &c., containing by admeasurement, &c., (be the same more or less,) and now or late in the occupation of, &c.; together with all and singular profits, portions, oblations, obventions, advantages, and appurtenances whatsoever to the said tithes, &c., and the reversion," &c.

When the conveyance of the conversion is by lease and release.

<sup>k</sup> If the conveyance be by way of lease and release, say: "Which said remainder or reversion, expectant as aforesaid, of and in the said hereditaments, is now legally and fully vested in the said (*purchaser*) by virtue of a bargain and sale," &c.

<sup>l</sup> A contingent remainder cannot be transferred at law, except by devise, but in equity it may be, and when the estate comes into possession, a conveyance of the legal estate must be made. A purchaser for a valuable consideration has a right to call for a conveyance of the legal estate when it becomes vested, or a release of it so far as the vendor can make such release with effect. (See 2 Prest. on Abst. 97.)

[*Recite<sup>m</sup> the contract for the purchase.*] Now, Parties.  
 this indenture witnesseth, that, in pursuance of Witnessing  
 the said agreement, and in consideration of the sum Par.  
 of, &c., by, &c., to the said, &c., the receipt, &c., he,  
 the said (*vendor*,) hath granted, bargained, and sold, Grant.  
 and by these presents doth grant, bargain, and sell,  
 unto the said (*purchaser*) and his heirs, all that seat  
 or pew, being No. 15, situate at the top of the east  
 aisle of the parish church of Saint George in W., in  
 the county of S., late the property, and in the pos-  
 session of, &c., and his family;" and all the estate,  
 right, title, interest, property, claim, and demand  
 whatsoever of him, the said (*vendor*,) of, in, and to  
 the same; to have and to hold the said seat or pew Habendum.  
 above-mentioned, and hereby granted, or intended so  
 to be, with the appurtenances, unto the said (*purchaser*)  
 and his heirs, to be used and enjoyed with  
 the messuage or dwelling-house of him, the said (*purchaser*,)  
 situate in a certain street there, called the  
 R. street, in S. aforesaid, within the said parish of  
 St G.<sup>o</sup> [*Add covenants from the vendor, that he* Covenants.

<sup>m</sup> If the seat was allotted by virtue of an act of Parliament, the same may be recited: "Whereas, by an act, &c., entitled, &c., it was enacted that the trustees therein nominated, or such person or persons, &c., after allotting such public seats or galleries as therein directed should allot unto the several persons, &c.; and whereas the seat or pew situate on the east side of the said church, being No. 15, was, conformably to the said act, allotted to the said," &c. When allotted by act of parliament.

<sup>a</sup> If the act be not recited, the same may be referred to thus: "And which said seat or pew was allotted unto, &c., by the commissioners acting under and by virtue of an act of Parliament made and passed in, &c., entitled," &c. But if the act has been recited, add after the description, "and allotted as aforesaid."

<sup>o</sup> If allotted or sold under a special act, it will not be necessary to add the above words of annexation of the pew to the house; but in the absence of such local act, there can be no seisin of a pew unless the same be annexed to a house, and then seisin of the house would be seisin of the pew, as seisin of the principal that of the accessory; therefore the

*hath good right to grant, for quiet enjoyment, free from incumbrances, and for further assurance. And add a covenant from the purchaser to well and truly pay all dues, rates, and contributions which may be hereafter lawfully made in respect of the said pew; and to do and perform all needful repairs at his own costs and charges, and wholly indemnify the said vendor therefrom.]* In witness, &c.

## BARGAIN AND SALE (ENROLLED.)

Parties.

This indenture, made, &c., between (*the vendor*) of the one part, and (*the purchaser*) of the other part [*Recite the seisin of the vendor, and the contract for sale.*] Now, this indenture witnesseth, that, &c., he, the said (*vendor*), hath granted,<sup>p</sup> bargained, and sold,

Testatum.

seat or pew does not belong to the person, but to the house, inasmuch as in an action on the case for disturbance of the pew, it must be laid in the declaration as appurtenant to a messuage in the parish; as a bare possession is not sufficient to maintain the action, but the plaintiff must prove a prescriptive right or faculty. (*Stocks v. Booth*, 1 T. R. 428; *Griffin v. Matthews*, 5 T. R. 296; and see *Mainwaring v. Giles*, 5 B. and Al. 356; *Clifford v. Wicks*, 1 B. and Ald. 493.)

Prescriptive right.

A prescriptive right (which presumes a faculty) must be shown by an uniform and exclusive possession of the owners or inhabitants of a particular messuage, and that the same has been repaired by them; and to exclude against the ordinary, such occupation must have been from time immemorial, (1 T. R. 428; 1 Phil. R. 325;) but against a wrong-doer, an uninterrupted possession for twenty years affords presumptive evidence of a legal title. (*Darwin v. Upton*, 2 Wms. Saund. 175, c.)

When a pew is appurtenant to a messuage, it may descend with the inheritance by immemorial custom, (3 Inst. 202; 12 Rep. 105;) and in such case it cannot be severed from the occupation of the house, and, therefore, it is conceived, the same cannot be sold or let without a special act of Parliament, (1 Hagg. Eccl. R. 29-34.)

<sup>p</sup> When trustees join in a deed of this description, restrain-

and by these presents doth, &c., unto the said (*purchaser,*) his heirs and assigns, all, &c., and the reversion, &c. Habendum in fee.<sup>1</sup> [*The usual covenants for title are generally added, but the words "grant, bargain, and sell," imply that the bargainor is seised, and that the premises are free from incumbrances, rents and services due to the lord of the fee only excepted.*] In witness, &c.\*

AN EXCHANGE.<sup>2</sup>

This indenture, made, &c., [*recite the title of both Parties. the parties exchanging.*] And whereas the said Recital. A. B. and C. D. have mutually agreed to exchange their said several pieces or parcels of land for the land of each other, and the same exchange, intended to be effected by these presents, shall be made in manner hereinafter mentioned. Now, this indenture Operative witnesseth, [*if the exchange is to be effected by two Part.* *deeds, say,* "that, in pursuance and part performance of the said agreement, by and on the part of the said A. B., and for and in consideration of the conveyance of the lands and hereditaments intended to be

ing words should be added, such as, "So far as they lawfully can or may, and not by way of covenant or warranty."

<sup>1</sup> The use cannot be limited in this deed to any but the bargainee, but it may be made subject to trusts.

<sup>2</sup> This must be on parchment, and enrolled within six lunar months, according to the stat. 27 H. 8, c. 16; and by 10 Ann. c. 18, s. 3, an examined copy of the enrolment, proved on oath, is made evidence. The statute of Henry does not extend to bargains and sales for terms of years. As to the operation of a bargain and sale, and of the enrolment thereof, (see Bac. Abr. *Bargain and Sale*, K. to N.; Inrolment, E.; Com. Dig. *Bargain and Sale*, B. 7.)

<sup>3</sup> Properly speaking, there can be but two parties, (see 2 Wills, 240;) the meaning of which is, that there can only be two exchanging parties, and only two separate estates conveyed in exchange; it is immaterial how many consenting parties are added.



Consideration.

Covenants.

made by the said in part recited indentures of lease and release." *But if the exchange be effected by one deed, say,* "For and in consideration of the lands and hereditaments secondly hereinafter described, and intended to be by these presents conveyed and assured to him, the said A. B., by the said C. D., as hereinafter is expressed." And also for and in consideration of the sum of 5s., of, &c., to, &c., paid by C. D., the receipt, &c., he, the said A. B., hath granted, bargained, sold, aliened, released, and confirmed, and, &c., (in his actual<sup>u</sup> possession, &c.) and to his heirs and assigns, all, &c., (*the hereditaments of A. B.*) [*Add the general words, and the reversion, &c., and all the estate, &c.;* (Habendum to bar dower, or otherwise, see pp. 45 and 52.)] In lieu of, and IN EXCHANGE for, all, &c. [*If the exchange be effected by two deeds, say,* "for all the messuages, &c., hereinbefore referred to, and intended to be conveyed and assured to him, the said A. B., and his heirs, by the said C. D., by the said indentures of, &c., as aforesaid;" *but if the exchange be effected by one deed, say,* "for the lands, &c., with the appurtenances hereinafter described, and by these presents conveyed and assured unto the said A. B. and his heirs by the said C. D., as hereinafter is expressed." Then add *the usual covenants for quiet enjoyment by C. D. so long as the lands and hereditaments [intended to be] so granted and conveyed to him, the said A. B., by*

<sup>t</sup> If a sum be given for equality of exchange, add, "and in consideration of the sum of, &c., to, &c., by, &c., the receipt whereof; (and that the same is by way of, and in full for, equality of exchange for and in respect of the lands and hereditaments conveyed unto the said C. D., as hereinafter is expressed,) he, the said A. B., doth hereby acknowledge," &c.

<sup>u</sup> If the exchange be perfected by one assurance, by the lease for a year, A. B. will first bargain and sell his lands to C. D., to hold in the usual way, and by a further witnessing part, C. D. will bargain and sell his lands to A. B. in like manner.

*the said C. D., in exchange for the same, as aforesaid ; [or, "as hereinafter mentioned,"] shall remain and continue to the use of the said A. B., his heirs and assigns ; and also that the hereditaments are free from incumbrances ; and for further assurance, (see Covenants, p. 85.) And add a proviso for re-entry in case of eviction from the lands given in exchange.\* If the exchange be intended to be effected by one deed, add a further witnessing part,*

† The covenants, as also provisos for re-entry, may be omitted, as the word exchange implies a warranty; some conveyancers think the deed better without them. Proviso for re-entry. The following is the form of the proviso: "Provided always, and it is hereby declared and agreed by and between the said parties to these presents ; and the said A. B. doth hereby for himself and his heirs declare and agree, that if the said C. D., his heirs or assigns, or any person or persons lawfully or equitably claiming by, from, under, or in trust for him, them, or any of them, shall at any time hereafter happen to be lawfully evicted or turned out of possession of the said, &c., hereinbefore granted and released in exchange as aforesaid, contrary to the true intent and meaning of these presents, by any person or persons having or claiming any former right or title thereto, or by the heirs or assigns of the said A. B., so that the said exchange shall be defeated ; that then and in such case the said hereinbefore recited indenture of lease and release, by way of exchange, bearing even date with these presents as aforesaid, and all the estate thereby granted and released, shall cease, determine, and be utterly void ; and then, and in such case, it shall and may be lawful to and for the said A. B., his heirs or assigns, to enter into the lands so thereby mentioned to be granted and released to him, the said A. B., and his heirs, in exchange for the lands and hereditaments as aforesaid, and the same to have again, repossess, and enjoy, as in his or their former estate, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding." If money be given for equality of exchange, add, "and that he, the said A. B., shall and will repay to the said C. D., his executors, &c., the sum of L. upon request made for that purpose, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding."

*conveying the lands of C. D. to A. B., as in the preceding manner from A. B. to C. D.; and with the same covenants and proviso, reversing only the names.] In witness, &c.*

#### CONVEYANCE BY MORTGAGOR AND MORTGAGEE.

This indenture, made, &c., between (the mortgagee) of the first part, (the mortgagor) of the second part, (the purchaser) of the third part, and (the trustee) of the fourth part. [*Recite the mortgage, the contract for the sale of the equity of redemption, the amount due on the mortgage, and the contract for redemption.*] Now, this indenture witnesseth, that, in consideration of the sum of, &c., by the said (purchaser) paid to the said (mortgagee,) the receipt, &c.; and also in consideration of the sum of, &c., by the said (purchaser) paid to the said (vendor,) the receipt, &c., he, the said (mortgagor,) hath bargained, sold, and released, and, &c., and the said (vendor) hath granted, bargained, sold, aliened, released, and confirmed, and, &c., unto the said (purchaser,) (in his actual possession, &c.,) and to his heirs, all, &c., [add the general words.] To have and to hold, &c. [Add a covenant from the mortgagee that he has done no act to incumber, and the usual covenants for title by the vendor.]\*

\* Where part of the estate is sold, and the consideration-money is paid to the mortgagee in part discharge, the recital may be, that "it has been agreed between the parties, that the purchase-money for the said premises so contracted to be sold, shall be paid to and received by the said mortgagee in reduction and part payment of the principal and interest moneys due and owing to him on his said security." In this case, the consideration to the vendor will be nominal.

\* It will be advisable for the purchaser to require attested copies of the deeds, and a memorandum should be indorsed on the mortgage-deed, stating the premises sold, and the amount of the consideration-money. And add a covenant

## CONVEYANCE BY TRUSTEES FOR SALE.

This indenture, made, &c., between (*the trustees*) of the first part, (*the owner*) of the second part, and (*the purchaser*) of the third part. [Recite the deed of trust for sale, with the clause that the trustees' receipts shall be discharges, &c.; and recite the sale by public auction; or if by private contract, say, "and whereas the said trustees, in pursuance of the trusts reposed in them as aforesaid, with the consent and approbation of the said (*owner*), testified, &c., have contracted, &c., (see p. 19.)] Now, this indenture witnesseth, that, in pursuance of the said agreement, and in consideration of, &c., to (*trustees*) upon or before, &c., at the request and by the direction of the said (*owner*), testified as aforesaid, ("to be by them applied and disposed of, pursuant to and according to the trusts and directions of the said indenture of," &c.,) the receipt, &c., and in consideration of 5s. to (*owner*), the receipt, &c., they, the said (*trustees*), at the request and by the direction of the said (*owner*), testified as aforesaid, have, and each of them hath, bargained, sold, and released, and by these presents, &c.; and the said (*owner*) hath granted, bargained, sold, released, and confirmed, and, &c., unto the said (*purchaser*), (in his actual possession

Conveyance from trustees under a deed of trust, in which the owner joins.

Testatum.

by the mortgagee for the production of the deeds during so long a time as the same shall remain in his possession, and a covenant by the vendor for their production afterwards.

\* In conveyances from trustees for sale, the deed creating the trusts should be recited fully, particularly as to the power of sale, and the proviso that the receipts of the trustees shall be discharges to the purchasers; the trusts of the money arising from such sale need not be set forth, but may be referred to thus: "In trust to apply the money arising from such sale in the manner and for the purposes in the said recited indenture contained."

Habendum.  
Covenants.

sion, &c.,) and to his heirs and assigns, all, &c., and the reversion, &c., and all the estate, &c. Habendum, (see p. 45.) [*Add a covenant from the trustees, that they have done no act to incumber; and from the owner, that notwithstanding, &c., they, the said, &c., are, or one of them is, lawfully seised; have good right to convey; free from incumbrances; and for further assurance.*] In witness, &c.

CONVEYANCE FROM DEVISEES IN TRUST AND  
HEIR-AT-LAW.

Recitals.

This indenture, made, &c., between A. B., &c., and C. D., of, &c., (devisees in trust named in the last will and testament of E. F., late of, &c., deceased,) of the first part, G. H., of, &c., eldest son and heir-at-law of the said E. F., of the second part, and (purchaser) of the third part. [*Recite the devise, with the power of sale, and that the receipts of trustees shall be discharges, &c.; and recite the death of the testator without revoking his will, leaving the said G. H., his eldest son, and heir-at-law; and recite the sale by auction or private contract, (see p. 19;) and recite, "that the said G. H. hath, at the request of the said (trustees,) and for the satisfaction of the said (purchaser,) agreed to join in these presents, and the conveyance and assurance intended to be hereby made, as hereinafter mentioned."*] Now, this indenture

Testatum.

witnesseth, that, in pursuance, &c., and in consideration of L. (purchase-money) to the said (trustees,) at or before, &c., (to be by them applied and disposed of pursuant to and according to the trusts and directions of the said will of the said E. F.,) the receipt, &c., and 5s. to heir-at-law, the receipt, &c., they, the said (trustees and heir-at-law,) have, and every of them hath, bargained, sold, and released, and by these presents do, &c., unto the said (purchaser,) (in his actual possession, &c.,) and to his heirs and assigns, all, &c., and the reversion, &c., and all the

estate, &c. Habendum. [*Add a covenant from the trustees that they have not incumbered.*]<sup>Habendum.</sup> In witness, &c.

CONVEYANCE FROM A TENANT FOR LIFE AND  
REMAINDER-MAN.

This indenture, made between A. B., of, &c., (*the tenant for life,*) and C. D., of, &c., eldest son and heir-apparent of the said A. B., of the one part; and (*purchaser,*) of, &c., of the other part. [*Recite the instrument creating the estates, and the contract by the purchaser with the tenant for life and remainderman for the purchase of the fee-simple.*]<sup>Recitals.</sup> Now, this indenture witnesseth, that, in pursuance, &c., and in consideration of, &c., to (*tenant for life,*) ("part of the said purchase-money or sum of L.," by, <sup>Testatum.</sup>

<sup>7</sup> The covenant from the trustees that they have done no act to incumber is all that can be expected from them; but if the persons entitled to the purchase-money join in the conveyance, (which is mostly the case where the clause that the trustees' receipts shall be discharges has been omitted in the instrument creating the trusts,) they will be expected to covenant for the title. If they are made parties, the release will be made between the trustees of the first part, the persons entitled to receive the purchase-money of the second part, and the purchaser of the third part. After reciting the will or instrument, with the power of sale, &c., and particularly showing the nature of the interests of such persons so entitled under the trusts of the same; and that the said trustees, at the request and by the direction of the said persons of the second part, signified by their being parties, have contracted for the sale, &c.; the trustees will then, in the operative part of the deed, at the request and by the direction of the parties of the second part, testified, &c., bargain, sell, and release; and the said parties of the second part will grant, bargain, sell, release, and confirm unto, &c.; and after the covenant by the trustees that they have not incumbered, the parties of the second part will enter into the usual covenants for the title.

<sup>Where the parties entitled to the purchase-money are made parties.</sup>

Habendum.  
Covenants.

&c., and in consideration of, &c., of like money, to the said (*remainder-man*,) in like manner paid by the said (*purchaser*,) the receipt of which said two several sums of, &c., making together the sum of, &c., they, the said A. B. and C. D., do hereby respectively acknowledge, and do admit, &c., to be in full, &c., they, the said A. B. and C. D., have, and each of them hath, &c., and, by these presents, do, and each of them doth, grant, bargain, sell, release, and confirm unto the said (*purchaser*,) (in his actual possession, &c.,) and to his heirs and assigns, all, &c., and the reversion, &c., and all the estate, &c. Habendum, add the usual covenants for title by the tenant for life and remainder-man, (*see ante*, p. 84.)

In witness, &c.

#### RELEASE FROM A REMAINDER-MAN TO THE TENANT FOR LIFE.

Testatum.

Habendum.

Covenants.

This indenture, made, &c., between A. B., of, &c., (*the remainder-man*,) of the one part; and C. D., of, &c., (*the tenant for life*,) of the other part. [*Recite the deed or will creating the estates, and recite the contract for the sale of the remainder in fee-simple of the said remainder-man in the said hereditaments immediately expectant on the estate for life of the said releasee in and to the said messuage, &c.*] Now, this indenture witnesseth, that, in pursuance, &c., and in consideration of L. , by, &c., to, &c., the receipt, &c., he, the said (*remainder-man*,) hath bargained, sold, released, and confirmed, and, &c., unto the said (*tenant for life*,) his heirs and assigns,<sup>2</sup> all, &c., and all the estate, and all deeds, &c. To have and to hold the said, &c. unto the said (*tenant for life*,) his heirs and assigns. [*Add covenants from the said A. B., that notwithstanding, &c., he is "seised*

<sup>2</sup> The releasee being already in possession, a lease for a year is not required

of the inheritance in fee-simple in remainder expectant as aforesaid," and hath good right to release the same unto the said C. D., his heirs, &c., in manner foresaid; *free from incumbrances; and for further assurance.*]

In witness, &c.

CONVEYANCE FROM A VENDOR AND HIS WIFE  
ENTITLED TO DOWER.

This indenture, made, &c., between (*vendor*,) of, &c., and Mary his wife, of the one part;<sup>a</sup> and (*purchaser*,) of, &c., of the other part. [*Recite the sei-* Recitals.  
*sin of the vendor; and recite the contract for sale; and recite that* "the said Mary, the wife of the said (*vendor*,) in order to enable the said (*vendor*) to perform his said contract, hath consented to release her title to dower out of the said hereditaments, and for that purpose to concur with him in the conveyance hereinafter contained." ] Now, this indenture Testatum.  
witnesseth, that, in pursuance of the said contract and agreement, and for carrying the same into effect, and in consideration of L. , paid by (*purchaser*) to (*vendor*,) the receipt, &c., he, the said (*vendor*,) hath granted, bargained, sold, and released, and by these presents doth, &c., and the said Mary, the wife of the said (*vendor*,) hath remised, released, and quitted claim, and by these presents doth, &c., unto the said (*purchaser*,) [in his actual possession, &c.,] and his heirs and assigns, all, &c., and the reversion,

<sup>a</sup> If the marriage has been contracted since the first of January 1834, the husband can convey his estate, or devise the same by his will, discharged of dower. (See 3 and 4 W. IV. c. 105, ss. 4 and 5; see p. 150.)

It is not necessary to refer to the act for enabling the wife to release, but if it should be thought advisable, it may be done as in note to p. 354; but it is requisite in all cases to show by a recital whether the estate be the inheritance of the husband or wife, or whether she is only entitled to dower.



Habendum.  
Covenant by  
vendor that  
his wife shall  
duly acknow-  
ledge, &c.

Covenants.

&c., and all the estate, &c. Habendum, "And the said (*vendor*,) for himself, his heirs, executors, and administrators, doth hereby covenant with the said (*purchaser*,) his heirs and assigns, that these presents shall forthwith, at the costs of the said (*vendor*,) be duly acknowledged by the said Mary his wife, (she hereby consenting,) and otherwise perfected, with the solemnities prescribed for rendering the deeds of married women effectual to extinguish their interests in real estates."<sup>b</sup> And also, that notwithstanding any act, &c., they, the "said (*vendor*,) and Mary his wife, now have in themselves, or the said (*vendor*) now hath in himself," good right to convey; and that (*purchaser*) shall peaceably enjoy; free from incumbrances; and for further assurance.

In witness, &c.

#### CONVEYANCE INCLUDING A MORTGAGE TO SECURE PART OF THE CONSIDERATION.

This indenture, made, &c., between (*the vendor*) of the first part, (*the mortgagee*) of the second part, and (*the purchaser*) of the third part. [*Recite the title of the vendor, and the contract for the purchase.*]  
"And whereas the said (*purchaser*,) being unable out of his own moneys to pay the whole of the

<sup>b</sup> This covenant is unnecessary when it is intended that the deed shall be acknowledged at the time of its execution.

When the  
money re-  
mains in the  
hands of the  
vendor.

<sup>c</sup> If part of the consideration is intended to remain in the hands of the vendor, and be secured to him on the premises, say, "and whereas the said (*purchaser*) hath contracted with the said (*vendor*) for the purchase of, &c., for, &c., but not being prepared with the whole of the said purchase-money, the said purchaser hath requested and prevailed upon the said (*vendor*) to let the sum of, &c., part of the said purchase-money, remain, secured with interest, upon the same hereditaments and premises, in manner hereinafter mentioned." Or say, "and to take such demise, by way of mortgage, of the same premises, as hereinafter is contained."

said purchase-money, hath applied to the said (*mortgagee*) to lend him the sum of L. , to enable him to complete his said recited contract, which the said (*mortgagee*) hath consented to do on having the repayment thereof, together with interest for the same, secured to him in manner hereinafter mentioned. Now, this indenture witnesseth, that, in consideration of, &c., part of the said purchase-money to the said (*vendor*), paid by the said (*mortgagee*), at the request and by the direction of the said (*purchaser*), testified by his being a party to and executing these presents, the receipt and payment of which said sum the said (*vendor*) and also the said (*purchaser*) do, and each of them doth, hereby acknowledge, and of and from the same sum and every part thereof do, and each of them doth acquit, release, and discharge the said (*mortgagee*) for ever by these presents; and also in consideration of, &c., the remainder of the said purchase-money, to the said (*vendor*) paid by the said (*purchaser*), making together the sum of, &c., the receipt whereof the said (*vendor*) doth hereby acknowledge, and doth declare the same to be in full, &c., for the absolute purchase of, &c.;<sup>d</sup>

<sup>d</sup> If part of the purchase-money is to remain in the hands of the vendor on security of the premises, " Now, this indenture witnesseth, that, in pursuance of the said agreement, and in consideration of the sum of L. (part of the said purchase-money) by the said (*purchaser*) to the said (*vendor*), the receipt, &c.; and also in consideration of L. (residue of the said purchase-money) secured to be paid to the said (*vendor*), with interest for the same, at the time and in manner hereinafter mentioned, he, the said (*vendor*), hath, &c., unto the said (*purchaser*), (in his actual possession, &c.,) and to his heirs and assigns, all, &c., to have and to hold, &c., unto (*the purchaser*), his heirs and assigns, to the use of (*the vendor*), his executors, administrators, and assigns, for the term of, &c., subject to the proviso hereinafter contained; and from and after the end, expiration, or other sooner determination of the said term, and in the meantime subject thereto, and to the payment of the said principal sum and interest, intended to be hereby secured to the use

The testatum when money remains.

Grant. he, the said (*vendor*,) at the request and by the direction of the said (*purchaser*,) testified, &c., hath granted, bargained, sold, and released, and, &c., unto the said (*mortgagee*,) (in his actual possession, &c.,) and to his heirs and assigns, all, &c., and the reversion, &c., and all the estate, &c., to have and to hold\* the said, &c., hereby, &c., unto and to the use of the said (*mortgagee*,) his heirs and assigns, subject to the proviso hereinafter contained for the redemption, &c. [*Add covenants from the vendor with the mortgagee, as in an ordinary conveyance, that he is lawfully seised; that he has good right to convey, subject to the proviso hereinafter contained for the redemption of the said hereditaments and premises; for peaceable possession, subject to the proviso, &c.; free from incumbrances; and for further assurance, at the costs of the mortgagee, his heirs or assigns, or of the said purchaser, his heirs or assigns; then add the usual pro-*

of the said (*purchaser*,) his heirs and assigns for ever;" or to uses to bar dower, (if required.) In the proviso for redemption, add, " and shall and will convey, surrender, and yield up, (or assign,) and effectually assure, all and singular the said, &c., hereby granted, &c., with their appurtenances, for all his and their estate, to the use of (or in trust for) the said (*purchaser*,) his heirs, appointees, and assigns, or as he or they shall direct or appoint."

When by demise to a third person.

• If the security is intended to be made to a third party by way of demise, the premises may be conveyed, " to hold to (*mortgagee*,) his executors, administrators, and assigns, for the term of, &c., and from and after the end, expiration, or other sooner determination of the said term, and in the meantime subject thereto, and to the payment of the said principal sum of, &c., and interest, intended to be thereby secured, and also to the proviso or agreement for cesser of the said term hereinafter contained, to the use of the said (*purchaser*,) his heirs and assigns for ever." Then add a proviso for making void the term on payment of the mortgage-money. Or the conveyance may be made " to hold to (*the purchaser*,) his heirs and assigns, to the use of (*the mortgagee*,) his executors, administrators, and assigns, for a term of years," subject to a proviso for redemption, remainder to itself in fee.

*viso as in a mortgage in fee, for redemption of the premises, and a covenant from the purchaser for payment, and for mortgagee to enter, in default of payment, &c., and enjoy, &c., free from incumbrances; and for further assurance by purchaser to mortgagee, with the proviso for enjoyment by the purchaser until default in payment of the mortgage-money.]*

In witness, &c.<sup>4</sup>

CONVEYANCE FROM A DEVISEE UNDER A WILL, IN WHICH THE TESTATOR'S WIDOW (ENTITLED TO AN ANNUITY) AND A LEGATEE JOIN IN RELEASING THE PREMISES SOLD, (THE REMAINDER OF THE PREMISES BEING A SUFFICIENT SECURITY.<sup>5</sup>)

This indenture, made, &c., between (*the vendor,*) of, &c., son and heir-at-law of, &c., late of, &c., de-

<sup>4</sup> This deed would require both a mortgage stamp upon the amount secured, and a conveyance stamp upon the whole purchase-money.

In a note upon this form in the first edition of this work, in which it was recommended that the premises should be conveyed at once to the mortgagee, or a power given to the purchaser in the conveyance to him, and the mortgage created by appointment under that power, it was stated that the premises would be thereby vested in the mortgagee, discharged from any judgments or incumbrances of the purchaser; but it is considered that, in consequence of the act of 1st and 2d Vict. c. 110, the rights of creditors would not be affected by any such expedients.

<sup>5</sup> If the whole of the premises devised have been contracted to be sold to the purchaser, the annuity might be secured by limiting the premises to the use, intent, and purpose that the annuitant should receive the sum of, &c., during her life; and a term of years created and limited to a trustee for securing the same, and subject thereto, to the use of the purchaser, his heirs and assigns, with a covenant by the purchaser for payment of the same; and with a declaration that, subject to the rent-charge, the term of years shall be in trust for the purchaser.

Recitals.  
Widow agrees  
to release.

ceased, of the first part; (*the widow*,) mother of the said (*vendor*,) and widow and relict of the said, &c., deceased, of the second part; and (*legatee*,) only daughter and a legatee named in the said will of the said, &c., of the third part; and (*the purchaser*) of the fourth part; [*recite the will whereby the testator gave to his wife an annuity, and a legacy to his daughter, and chargeable therewith he devised his messuages to the vendor in fee; and recite the death of testator, the proving of his will, and the contract for sale.*] And whereas the said (*legatee*) has attained her age of twenty-one years; and whereas the said [*widow and <sup>b</sup>legatee,*] at the request

If the annuitant is not made a party to the conveyance, then, so much of the money as will produce an annual income equal to the charge may remain in the purchaser's hands on security of the estate; and to effect the same, a term may be limited to trustees to pay out of the rents the annual sum required to the annuitant; and after his decease, in trust to raise the principal and interest, and pay the same to the vendor.

Covenant by  
vendor to  
procure dis-  
charges and  
releases from  
legatees when  
they come of  
age.

<sup>a</sup> If the legacy be not yet payable, by reason of the legatee being a minor, but is intended to remain chargeable on the premises unsold, a covenant may be added by the vendor for payment of the same, as follows: "And the said (*vendor*,) for himself, his heirs, executors, and administrators, doth hereby further covenant, promise, and agree to and with the said (*purchaser*,) his heirs and assigns, that he, the said (*vendor*,) his heirs, &c., shall and will well and truly pay, or cause to be paid, unto the persons entitled to receive the said several legacies, or sums of, &c., in and by the said will of the said, &c., given and bequeathed to, or provided for the said, &c., as aforesaid, as and when the same shall respectively become due and payable; and shall and will, at the expense of the said (*vendor*,) his heirs or assigns, well and effectually, in due course of law, to the satisfaction of the counsel of the said (*purchaser*,) his heirs or assigns, cause and procure the said (*legatees*,) their respective executors, administrators, or assigns, or the person or persons respectively entitled to and receiving the said sums of, &c., absolutely to release, exonerate, and discharge the said messuage, &c., hereby, &c., of and from the said three lega-

of the said (*vendor*.) and for the purpose of enabling him to complete his said recited contract, have agreed to join in these presents for the purpose of releasing and discharging the said hereditaments so agreed to be sold as aforesaid, as well of and from the said hereinbefore mentioned legacy or sum of L. , and the said annuity or rent-charge of L. , so by the said recited will respectively charged upon the same hereditaments and premises, as aforesaid, as also of all right and title of the said (*widow*) to dower or thirds of and in the same hereditaments. Now, this indenture witnesseth, that, in pursuance of the said recited agreement, and in consideration, &c., he, the said (*vendor*.) hath granted, bargained, sold, aliened, released, and confirmed, and, &c., and they, the said (*widow and legatee*.) have, and each of them hath, remised, released, and for ever quitted claim, and, &c., unto the said (*purchaser*.) (in his actual possession, &c.) and to his heirs and assigns, all, &c., and the reversion, &c., and all the estate, &c., habendum, &c., freed and absolutely discharged of and from the said legacy, or sum of L. ; and also of and from the said annuity, or yearly rent-charge, or sum of, &c., in and by the said will of the said (*testator*.) given and devised to her, the said (*widow*.) as hereinbefore mentioned, and of and from all arrears, actions, suits, claims, and demands, of or on account thereof; and also of and from all dower, right, and title of or to dower, which she has, or may at any time hereafter have, in the said lands and hereditaments. Pro-  
 vided always, and it is hereby declared and agreed by and between the said parties to these presents, that nothing in these presents contained shall extend, Proviso that nothing shall extend to release the other lands, chargeable, and remaining unsold.

cies or sums, and every part thereof respectively; and shall and will, in the meantime, and until such releases and discharges can and shall be had and obtained, as aforesaid, well and sufficiently save, defend, keep harmless, and indemnified, as well the said purchaser, his heirs and assigns, as the said messuage, &c., hereby, &c., of and from all interest, actions, suits, claims, and demands, on account thereof." And in the meantime to indemnify, &c.

or be construed, deemed, or taken to extend, to release, exonerate, and discharge any of the lands, hereditaments, and premises, in and by the said will of the said (*testator*) given and devised as aforesaid, which are not herein or hereby mentioned and intended to be granted and released of and from the said annuity or yearly sum of L. , in and by the same will given and provided for the said (*widow*) during her life, and of and from the said legacy, or sum of L. , and provision thereby made for the said (*legatee*) as herein before mentioned, or any part thereof respectively, but that the said last-mentioned lands and hereditaments shall be and remain subject and liable to the payment thereof in such and the same manner as if these presents had not been made. In witness, &c.

**SURRENDER<sup>1</sup> BY A TENANT FOR LIFE TO PARTY ENTITLED TO THE REVERSION OR REMAINDER.**

This indenture, made, &c., between (*the tenant for life*,) of the one part, and (*the reversioner*,) of the other part. [*Recite the deed or will creating the estate, and that the (purchaser) hath agreed with the (vendor,) in consideration of the sum of, &c., to surrender up the premises, to the intent that the estate for life of him, the said vendor, may be merged and extinguished in the reversion and inheritance now vested in the (purchaser.)* Now, this indenture witnesseth, that, in pursuance of the said agreement, and in consideration of, &c., by, &c., to, &c., the

<sup>1</sup> The conveyance of an estate for a life varies so little from an ordinary conveyance, that it has been thought unnecessary to insert a form of it. If there is any intervening estate between the estate for life and the reversion or remainder, the conveyance cannot operate as a surrender, and a lease for a year would be necessary as in other conveyances.

receipt, he, the said (*vendor*), hath surrendered and yielded up, and by these presents doth, &c., all, &c., parcels, and all the estate, &c.; to the intent that the estate for life of the said (*vendor*) in the said hereditaments and premises may merge in the immediate reversion in fee-simple, now vested in the said (*purchaser*), and be thereby extinguished. [*Add covenants from the vendor, that he has done no act to incumber; and for further assurance* "for the further, better, and more effectually surrendering, confirming, or otherwise assuring the said," &c. In witness, &c.] (*An habendum is not necessary in this surrender.*)

#### CONVEYANCE BY ASSIGNEES OF A BANKRUPT.

This indenture, made, &c., between A. B., of, &c., and C. D., of, &c., (*assignees*), of the first part; E. F., of, &c., (*official assignee*), of the second part; G. H., of, &c., (*bankrupt*,<sup>k</sup>) of the third part; and (*purchaser*), of the fourth part. Whereas a fiat in bankruptcy, under the hand of the Lord Chancellor of Great Britain, bearing date, &c., was issued against the said (*bankrupt*), who was thereupon duly found and adjudged a bankrupt; and whereas the said A. B. and C. D. are the assignees chosen by the creditors of the estate and effects of the said bankrupt; and the said E. F. is the official assignee of the estate and effects of the said bankrupt.<sup>l</sup>

<sup>k</sup> The bankrupt may be ordered to join in the conveyance by the Lord Chancellor, but it is apprehended he is not compellable to enter into the covenants for the title; but they may be added if the bankrupt is willing to covenant.

<sup>l</sup> In a conveyance of copyholds, the commissioners must be made parties, as, by 6 Geo. IV. c. 16, s. 68, the commissioners are directed, instead of conveying to the assignees by deed, &c., to make sale, &c.; and by the 1st and 2d Will. IV. c. 56, 55, 25, and 26, those estates only are vested in the assignees by the appointment which, according to



[*Recite the contract for sale.*] Now, this indenture witnesseth, that, in pursuance of the said agreement, and in consideration of the sum of, &c., to the said (*official assignee*) by the said (*purchaser*), the receipt, &c.; and also in consideration of 10s. to the said (*bankrupt*) by the said (*purchaser*), they, the said (*parties hereto, of the first and second parts*), have, and each and every of them hath bargained, sold, and released, and, &c., and the said (*bankrupt*) hath granted, bargained, sold, released, and confirmed, and, &c., unto the said (*purchaser*), (in his actual possession, &c.) and to his heirs and assigns, all, &c., and the reversion, &c., and all the estate, &c. *Habendum*, (see p. 45.) [*Add covenants from assignees, each so far as relates to and concerns his own acts and defaults, that they have done no act to incur.*] In witness, &c.

#### CONVEYANCE OF AN EQUITY OF REDEMPTION.

This indenture, made, &c., between (*the vendor*), of the one part,<sup>m</sup> and (*the purchaser*), of the other part. [*Recite the title of the vendor, the mortgage, the amount of principal and interest due, and the contract for purchase.*] Now, this indenture witnesseth, that, in pursuance, &c., and in consideration of, &c., the receipt, &c., and doth admit the same to be in full for the absolute purchase of the equity of redemption, of and in the said (*premises*), and of and from, &c., doth acquit, &c., he, the said (*vendor*), hath granted, bargained, sold, released, and confirmed, and, &c., unto the said

Testatum.

the then existing laws, were directed to be conveyed to them.

As to mortgagee being a party.

<sup>m</sup> If the mortgagee be not made a party, it will be advisable to give immediate notice to him of the conveyance of the equity of redemption, to prevent any further advance or further charge by mortgagor, which would be valid if the mortgagee had no notice of such conveyance. (2 Atk. 349.)

(*purchaser*,) (in his actual possession, &c.,) and to his heirs and assigns, all, &c.; together with all houses, &c., and the reversion, &c., and all the estate, power, equity of redemption, &c.; to have and to hold the said, &c., unto and to the use of the said (*purchaser*,) his heirs and assigns, subject nevertheless to the said hereinbefore in part recited indentures of lease and release, and mortgage, of the, &c., and to the payment of the said principal sum of, &c., and interest henceforth to grow due for the same. [Add covenants for title qualified as to the mortgage, and a covenant by the purchaser for payment of the mortgage debt. See p. 93.]<sup>a</sup>

Habendum.  
Covenants for title.

<sup>a</sup> If the mortgagee joins in the conveyance for exonerating the vendor, recite that, "by the before in part recited indenture of, &c., the said (*vendor*) did covenant with the said (*mortgagee*) to pay the said principal sum of, &c., with interest for the same, at the time and in manner therein mentioned. Now, this indenture witnesseth, that, in consideration of the covenant hereinafter contained and entered into by the said (*purchaser*) to and with the said (*mortgagee*,) he, the said (*mortgagee*,) doth hereby release and for ever discharge the said (*vendor*,) his heirs, executors, and administrators, of and from the said covenant, and all benefit and advantage to be taken thereof." Then add a covenant for payment of the mortgage-money: "And the said (*purchaser*) doth hereby covenant, promise, and agree to and with the said (*mortgagee*,) that he, the said (*purchaser*,) shall and will, within the space of six calendar months from the date hereof, (or) on or before the       day       , [or] when thereto required by the said (*mortgagee*,) his executors, administrators, or assigns, well and truly pay, or cause to be paid, unto the said (*mortgagee*,) his executors, administrators, or assigns, the said sum of L.       , with lawful interest for the same, without any deduction or abatement whatsoever;" and to indemnify, &c.

In ascertaining the stamp, it must be remembered that the mortgage debt is to be added to the purchase-money.

DISENTAILING DEED,<sup>o</sup> BEING A GRANT OF A REMAINDER WITH THE CONSENT OF THE PROTECTOR.

This indenture, made, &c., between A. B., (*tenant in tail*), of the first part ; C. D., (*protector*), of the second part ; and E. F., (*trustee*), of the third part. [*Recite the instrument creating the entail, and such other facts (if any) as are necessary to show the title of the protector and tenant in tail, as the determination of estates previous to the former or the vesting of the latter.*] And whereas the said A. B., being desirous of barring the said estate tail in remainder expectant as aforesaid, so vested in him, by, &c., and all other estates tail, and all remainders and reversions thereon expectant, and all conditions and collateral limitations thereto annexed, of and in the said hereinbefore mentioned messuage and hereditaments, and of acquiring the fee-simple therein, in remainder expectant as aforesaid, the said C. D., as the protector of the settlement created by the said (*will*) of the same messuage and hereditaments, hath, at his request, agreed to join and concur in these presents for the purpose of testifying his consent thereto, in manner hereinafter mentioned. Now, this indenture witnesseth, that, in pursuance of the said recited desire and agreement in this behalf, and for the purpose of barring and extinguishing the said estate tail, and all remainders and reversions thereupon expectant, and all conditions and collateral limitations thereunto annexed, and all estates, rights,

<sup>o</sup> Where the protector is the owner of a previous estate, there can be no objection to conveying by grant, as his joining affords evidence of the existence of such previous estate. This form can be easily altered into a lease and release, by using the operative words applicable to that mode of conveyance, and inserting the reference to the lease. This deed must be enrolled within six calendar months from its execution by the tenant in tail.

titles, interests, and powers to take effect after the determination, or in defeasance of the same estates-tail, and to limit the fee-simple of the same hereditaments in remainder expectant as aforesaid, to the uses, and in manner hereinafter mentioned. He, the said A. B., with the consent and approbation of the said C. D., as the protector of the said settlement as aforesaid, testified by his being a party to, and executing these presents, hath granted and confirmed, and by this present deed intended to be forthwith enrolled in her Majesty's High Court of Chancery, doth grant and confirm<sup>p</sup> unto the said E. F., and his heirs, all that the remainder or reversion expectant as aforesaid, of and in all, &c., and also of and in all and singular the rights, members, and appurtenances to the same messuage and hereditaments belonging, or in any wise appertaining; and the reversion, &c., and all the estate, &c. *Habendum, &c.*, unto the said E. F., and his heirs for ever, (freed and absolutely discharged of and from the said estate-tail, in remainder expectant as aforesaid, of the said A. B., and all other estates-tail, and all remainders or reversions thereupon expectant or depending, all conditions or collateral limitations thereunto annexed, and all estates, rights, titles, interests, and powers, to take effect after the determination, or in defeasance of the said estates-tail.) But, nevertheless, to the uses, &c. <sup>q</sup>Provided always, neverthe-

<sup>p</sup> If the vendor's wife join in the conveyance for barring dower, add, " And the said Mary B., under and by virtue and in pursuance of the powers and provisions given by and contained in the said act of parliament, and in order to bar and extinguish all dower, and right and title of dower, which she hath, or could or might claim or set up, upon or out of the hereditaments hereby granted, &c., doth by these presents (intended to be acknowledged according to the directions of the said act) grant, remise, release, quit, claim, and confirm."

<sup>q</sup> This proviso must be inserted or omitted, according to circumstances.

less, and it is hereby expressly agreed and declared between and by the said parties hereto, that the concurrence of the said C. D. in these presents shall not, nor shall any thing herein contained, operate or be deemed, construed, or taken as operating, to preclude him from exercising or consenting to the exercise of the several powers and authorities in and by the said recited [will of, &c.] declared, expressed, and contained of and concerning the said messuage and hereditaments, whereof or wherein such remainder or reversion is hereinbefore expressed, or intended to be hereby granted as aforesaid, or otherwise prejudice the exercise of the same powers and authorities, or any of them; but that such powers and authorities shall continue and subsist, and shall be exercisable in such and the same manner, in all respects, as if these presents had not been made or executed, or as if the said C. D. had not joined or concurred herein.

In witness, &c.

#### COVENANT TO SURRENDER COPYHOLDS.

This indenture, made, &c. [*Recite the instrument under which the vendor claims to show the equitable title, and the copy of court roll to show the legal title at the date of such instrument, and the subsequent surrenders and admissions, and recite the contract for purchase.*]: Now, this indenture witnesseth, that, in pursuance of the said agreement, and in con-

\* If freehold and copyhold, say, "For the sale of the fee-simple and inheritance of and in the freehold parts of the messuage, &c., hereinafter described, and of the copyhold parts of the same hereditaments, free from incumbrances, at or for the price or sum of, &c.; and upon the treaty for the said purchase it was agreed, that the sum of, &c., part of the said sum of, &c., should be the apportioned value of the said freehold hereditaments, and that the sum of, &c., should be the apportioned value of the said copyhold hereditaments."

sideration, &c., he, the said \_\_\_\_\_, doth hereby for himself, his heirs, executors, and administrators, covenant, promise, declare, and agree to and with the said \_\_\_\_\_, his executors, administrators, and assigns, in manner following ; (that is to say,) that he, the said \_\_\_\_\_ [his executors, administrators, and assigns, (or) his heirs and assigns,] shall and will, at the costs and charges of the said [*purchaser*,] his executors, administrators, or assigns, at or before the next general or other court which shall be holden for the said manor of \_\_\_\_\_, or other the manor or manors whereof the same copyhold premises, or any of them, are holden, well and effectually surrender, or cause or procure to be well and effectually surrendered, into the hands of the lord or lords, lady or ladies, for the time being, of the said manor or manors, or otherwise convey and assure, according to the custom thereof respectively ; to or to the use and behoof of the said purchaser, his heirs and assigns, all, &c., and all houses, &c., and the reversion, &c., and all the estate, &c. ; to the end and intent, that the lord of the said manor may, immediately after such surrender, regrant the said copyhold premises with the appurtenances unto the said [*purchaser*,] his [heirs and assigns.] To hold the same to him, the said [*purchaser*,] his heirs and assigns for ever, at the will of the lord, according to the custom of the said manor, subject only to the rents, suits, and services therefore due, and of right accustomed ; and that, in the meantime, and until such surrender shall be made, and the said [*purchaser*,] or his heirs, shall be admitted tenant to the said hereditaments by virtue thereof, he, the said [*vendor*,] and his heirs, shall and will stand, and be seised or possessed of the said copyhold, messuage, or tenement, lands and hereditaments, and every part and parcel of the same, with the appurtenances ; upon trust for, and for the sole use, benefit, and advantage of the [*purchaser*,] his heirs and assigns, and to be surrendered and disposed of from time to time as he or they shall direct or ap-

point, according to the true intent and meaning of these presents. [*Conclude with the covenants for title applicable to copyholds.*] In witness, &c.

#### CONVEYANCE OF LEASEHOLDS FOR LIFE.\*

Testatum  
clause.

This indenture, made, &c., between (*the vendor*) of the one part, and (*the purchaser*) of the other part. [*Recite the lease and contract for sale.*] Now, this indenture witnesseth, that, &c., and in consideration, &c., he, the said (*vendor*), hath granted, bargained, sold, aliened, released, and confirmed and, &c., unto the said (*purchaser*), (in his actual possession, &c.) his heirs and assigns, all, &c., together with all and singular houses, &c., and all the estate, &c., to have and to hold the said, &c., unto and to the use of the said (*purchaser*), his heirs and assigns, for and during the lives of, &c., and the longest liver of them. [*Add covenants from vendor that, notwithstanding, &c., the lease is valid, and that he hath good right to grant, &c., during the lives of, &c., and according to the true intent, &c., for quiet enjoyment, and that free from incumbrances, except the rent and covenants in the said lease; and for further assurance, (see p. 94;) and further, that the rent and taxes are paid, (see p. 96;) and add covenants from the purchaser for performance of the covenants, and to indemnify the vendor from the rents, (see p. 96.)*] In witness, &c.

\* Leaseholds for lives being freehold, must be conveyed by lease and release, or other conveyance sufficient to pass a freehold, as feoffment, or bargain and sale enrolled.

## CHAPTER XXI.

### OBSERVATIONS ON PURCHASE-DEEDS.\*

A TITLE for forty years is not considered strictly marketable, as cases may arise in which the same would be defective; for instance, a title taken up forty bears back, might begin with a conveyance from A., who assumed to be seised of the fee-simple and inheritance of the premises, and which were conveyed as such, but if upon investigation it turns out that he was seised of an estate for life only, with remainders over; in such case, the purchaser accepting such title would be liable to eviction, if the tenant for life was still living, or has not been dead twenty years; or has been dead for that period, but the right of the remainder-man has been kept alive by disability.

By the 4th and 5th sections of the Dower Act, (see As to the wife's dower. p. 150,) a husband, unless married on or before the 1st January 1834, is enabled to dispose of his estate by deed in his lifetime, or to devise the same by his will, discharged of dower; and by sections 6 and 7, unless married on or before that day, he may, by inserting a declaration in his purchase-deeds, or in his

\* In the first edition there were several points touched upon under this head which have now been omitted in this chapter, being more fully discussed in the previous chapters on the Preparation and Perusal of Deeds, and on Abstracts of Title.



will, as in p. 52, negating the right of dower, bar his wife's right thereto; also by devising to his wife any land or estate, or interest in any land, out of which she would be dowable, he thereby excludes her right to dower.

As to the precautions of preventing dower in the purchase of a reversion.

In the conveyance of a remainder or reversion, to a man who was married on or before 1st January 1834, the same precautions are requisite for preventing dower attaching when the estate comes into possession, as are used in conveyances of estates in possession.

Parcels.

The parcels should be minutely described by their denominations and quantities, boundaries, and the names of the occupiers. In the covenant to surrender copyholds, general words should be omitted.

General words.

General words will pass the tithes with the estate sold; therefore, if the same are not intended to pass, they must be expressly excepted; as also as to ways, &c., intended to be reserved to the vendor, and the purchase-deeds made subject thereto.

Covenants.

The usual covenants for the title are, 1st, That, notwithstanding any act, deed, matter, or thing by him, the said vendor, or by those under whom he claims, he is lawfully seised; 2d, That he has good right to convey; 3d, For peaceable possession, and *that* free from incumbrances; and, lastly, That he will do any further act the better to convey and assure the premises. See ante, p. 14.

Covenants by trustees.

In covenants from trustees and assignees, the proper words are "covenant and declare."

Of assigning and surrendering terms in the conveyance of the freehold.

In small purchases, satisfied terms are assigned at the end of the conveyance of the freehold to attend the inheritance, in which case the creation of the same, and in whom the same is vested, must be shown, as in p. 32, and then assigned in the usual way, by the direction of the vendor, at the nomination of the purchaser, in trust for the purchaser. But if a term is intended to be merged, the trustee of the term, at the request and by the direction of the vendor, and upon the acceptance of the said purchaser,

testified, &c., will bargain, sell, assign,<sup>u</sup> surrender, and yield up unto the purchaser, (or the releasee to uses,) his heirs and assigns, all, &c., and all the estate, &c.; to hold the same unto the said, &c., his heirs and assigns, to and for the end, intent, and purpose, that the said term of, &c., for the residue thereof, may be merged and extinguished in the freehold reversion and inheritance of the said premises, or otherwise cease, determine, or become void, to all intents and purposes whatsoever. [Add a covenant from the trustee, that he hath done no act to incumber.] In witness, &c.

<sup>u</sup> The word assign is used to provide against any intervening estate between the term and inheritance preventing merger, in which case the term would be vested in the purchaser or owner of the fee as the assignee thereof.

## CHAPTER XXII.

### DECLARATIONS OF TRUST.

#### DECLARATION OF TRUST BY A PERSON IN WHOSE NAME AN ESTATE WAS PURCHASED.

THIS indenture, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. [*Recite the conveyance, assignment, or surrender.*] And whereas the said sum of L. , the consideration in the said last recited indenture mentioned to have been paid by the said A. B. as aforesaid, was not paid by the said A. B. out of his own money, but was in fact the proper money and estate of the said C. D., as he, the said A. B., doth hereby acknowledge, and the name of the said A. B. was therein inserted as a trustee for the said C. D. And whereas the said A. B. hath accordingly, at the request of the said C. D., consented to make and execute such declaration of trust as to the hereditaments and premises comprised in and conveyed by the said recited indenture as hereinafter contained. Now, this indenture witnesseth, that, in pursuance of the said recited agreement, and in consideration of the premises, he, the said A. B., doth hereby acknowledge, testify, and declare, that the said sum of L. so expressed to have been paid by him, the said A. B., to the said, &c., as the consideration for the purchase of the said

hereditaments and premises, mentioned and comprised in the said recited indenture of, &c., as aforesaid, was not the proper money and estate of the said A. B., but such sum was the proper money and estate of the said C. D.; and also that he, the said A. B., his heirs and assigns, shall and will stand seised<sup>v</sup> of the said hereditaments mentioned and comprised in the said recited indenture of, &c., and of their and every of their rights, members, and appurtenances, upon trust for the said C. D., his heirs and assigns, and to be conveyed and disposed of from time to time as the said C. D., his heirs or assigns, shall direct and appoint.<sup>v</sup> In witness, &c.

**DECLARATION OF TRUST BY MORTGAGEE WHERE THE MORTGAGE WAS MADE TO ONE, BUT THE MONEY ADVANCED BY SEVERAL PERSONS.**

This indenture, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., and E. F., of, &c., of the other part. (Recite the mortgage.) And

<sup>v</sup> If copyhold, say, "and that he, the said, &c., shall and will stand seised (and possessed) of the said copyhold hereditaments and premises, mentioned and comprised in, &c., (according to the nature and quality thereof, and the custom of the said manor,) with their, and every of their appurtenances, upon trust for the said C. D., his, &c., and to be surrendered, conveyed, and assured, as," &c., (as above.)

If leasehold, say, "and that he, the said, &c., his executors, administrators, and assigns, shall and will stand possessed of the said \_\_\_\_\_ and premises mentioned and comprised in, &c., and of their, &c., for and during, &c., upon trust for the said C. D., his executors, administrators, and assigns, and to be assigned and disposed of as he, the said C. D., his executors, administrators, and assigns, shall direct and appoint."

<sup>v</sup> A covenant is sometimes added, on the part of the trustee, to convey on request of the owner; but the above words are sufficient to entitle the party to a decree for a conveyance in a court of equity.

Operative  
part.

whereas, although by the said recited indenture of mortgage, the whole of the said sum of L. therein mentioned to have been advanced and paid by the said A. B., would appear to have been his own proper money, yet in fact the sum of L. , part thereof, was the proper money of the said C. D.; and L. , further part thereof, was the proper money of the said E. F.; and L. , the remaining part thereof, only was the proper money of him, the said A. B. And whereas the said A. B. hath, at the request of the said C. D. and E. F., agreed to execute such declaration of trust as to the said principal and interest moneys as is hereinafter contained: Now, therefore, this indenture witnesseth, that he, the said A. B., doth hereby acknowledge, testify, and declare, that the sum of L. , part of the said sum of L. so advanced on the security of the said hereditaments and premises mentioned and comprised in the said recited indenture of, &c., was not the proper money of the said A. B., but the same was and is the proper moneys and estate of the said C. D.; and that the sum of L. , further part of the said sum of L. , was and is, &c., of the said E. F.; and that he, the said A. B., his executors, administrators, and assigns, shall and will stand possessed of the said mortgaged hereditaments and premises, with their and every of their rights, members, and appurtenances. in trust, as well for securing the payment of the said sum of L. and interest to the said C. D., his executors, administrators, and assigns, and of the said sum of L. to the said E. F., his executors, administrators, and assigns; as also for securing the said sum of L. and interest to him, the said A. B., his executors, administrators, and assigns; and that he, the said A. B., his executors, administrators, and assigns, shall not nor will assign or otherwise make void the said mortgage, or release the moneys thereby secured, without the consent in writing of them, the said C. D. and E. F., their executors, administrators, or assigns, or until they shall

be fully paid and satisfied the said several sums and interest, part of the said mortgage-money, so belonging to them, the said C. D. and E. F. as aforesaid, but that he, the said A. B., his heirs, executors, administrators, and assigns, shall and will stand possessed of, and interested in, the said two several sums of L.      and L.      , part of the said principal sum of L.      , and all interest thereon respectively, and the benefit of the said securities for the same, upon trust for the said C. D. and E. F. respectively, and their several and respective executors, administrators, or assigns, according to their several interests therein. In witness,<sup>\*</sup> &c.

DECLARATION OF TRUST BY TRUSTEES OF A SETTLEMENT AS TO MONEY ADVANCED BY THEM ON MORTGAGE.

To all to whom, &c., A. B., of, &c., and C. D., of, &c., (*trustees*,) send greeting: Whereas, &c. [*Recite* <sup>Recital.</sup> *the settlement, deed of trust, or will, and the mortgage.*] And whereas the said sum of L.      so advanced by the said (*trustees*) to the said (*mortgagor*) was not the proper money of the said (*trustees*,) but was part of the trust-moneys which have come to their hands under and by virtue of the said recited indenture of settlement: Now know ye, and these <sup>Operative</sup> presents witness, that they, the said (*trustees*,) do <sup>part.</sup> hereby acknowledge, testify, and declare, that the said sum of L.      so advanced by them to the said (*mortgagor*) as aforesaid, on security of the hereditaments and premises mentioned and comprised in the said recited indenture of appointment and release, of even date herewith, was not the proper money and estate of the said (*trustees*,) but the same was and is part of the trust-moneys come to their

<sup>\*</sup> This form may, with a few obvious alterations, be made applicable to the different cases which may occur.

hands under the trusts of the said hereinbefore in part recited indenture of the, &c. And that the said (*trustees,*) and the survivor of them, and the heirs, executors, administrators, and assigns of such survivor, shall and will stand seised and possessed of the said hereditaments and premises mentioned and comprised in the said recited indenture of, &c., of even date herewith, with their, and every of their rights, members, and appurtenances, and of the said principal sum of L.                      and the interest thereof, thereby secured or expressed, and intended so to be, upon the trusts, and to and for the several ends, intents, and purposes, and by, with, under, and subject to, the several powers, provisos, declarations, and agreements, mentioned, expressed, and declared in and by the said indenture of settlement of the, &c., of and concerning the said sum of L.                      , or trust-funds of which the same formed a part, or such of them as are now subsisting and capable of taking effect. In witness, &c.

DECLARATION OF TRUST AS TO MONEY SECURED ON  
A BOND.

Recital.

To all to whom, &c., [*recite the bond.*] And whereas the consideration for which the said recited bond was given, and which is secured thereby, was the sum of L.                      lent and paid by the said A. B.

Operative  
part.

to the said E. F., but such sum was not the proper money of the said A. B., but was the proper money and estate of C. D., of, &c. Now know all men, &c., that the said A. B. doth hereby acknowledge, testify, and declare, that the said sum of L.                      , so secured upon and by virtue of the said recited bond and obligation, was not the proper money of the said A. B., but that the same was and is the proper money and estate of the said C. D.; and that the name of the said A. B. was only made use of in the said bond and obligation in trust, and for the only use and be-

nefit of the said C. D., his executors, administrators, and assigns; and that he, the said A. B., shall and will, at any time when required by the said C. D., his executors, administrators, and assigns, for such purpose, (upon being indemnified of and from all loss, costs, or charges, which may be occasioned thereby,) permit him or them to use the name of him, the said A. B., his executors or administrators, in and for the purpose of bringing and maintaining any suit or action on such bond as may be necessary for obtaining payment of the said sum of L.       thereby received as aforesaid, or otherwise dispose of the said bond or obligation as the said C. D., his executors, administrators, and assigns, shall direct. In witness, &c.



## CHAPTER XXIII.

### DISTRESS FOR RENT.

Warrant to  
distrain.\*

I HEREBY authorize and require you to distrain the goods and chattels in the dwelling-house [*or* in and upon the farm, lands, and premises] of A. B., situate at \_\_\_\_\_ in the county of \_\_\_\_\_ for L. \_\_\_\_\_, being \_\_\_\_\_ years' rent due to me for the same, at last, and to proceed thereon, for the recovery of the said rent, as the law directs. Dated the day of \_\_\_\_\_ 184 \_\_\_\_\_.

To E. F., my bailiff.

Yours, &c., C. D.

### INVENTORY OF GOODS DISTRAINED.

An inventory of the several goods and chattels

\* In order to prevent excessive and ruinous charges in the execution of distresses for small rents, it is enacted, by 57th Geo. III., c. 93, that no broker, &c., in levying a distress under L. 20, shall take more than the following sums, under the penalty of treble the amount of the moneys so unlawfully taken; viz. for levying the distress, 3s.; man in possession, per day, 2s. 6d.; appraisalment, whether by one broker or two, 6d. in the pound on the value of the goods; stamp, the lawful amount thereof. All expenses of advertisements, (if any,) 10s.; catalogues, 1s. in the pound on the net produce of the goods. And the broker is required to give a copy of his charges to the person distrained upon.

distrained by me, C. D., [or E. F., the bailiff,] the day of \_\_\_\_\_, in the year of our Lord 184 \_\_\_\_\_, in the dwelling-house, &c., [describing the premises,] of A. B., situate at \_\_\_\_\_, in the county of \_\_\_\_\_, [and if the distress be made by a bailiff, say, "by the authority and on the behalf of C. D.,"] for the sum of L. \_\_\_\_\_, being \_\_\_\_\_ years' rent due to me, [or "to the said C. D.,"] at \_\_\_\_\_ last. In the dwelling-house, in the parlour, one table [setting out the goods.]

Mr. A. B.

Take notice, that I have this day distrained [or Notice of distress written under the inventory. "that, as bailiff to C. D., your landlord, I have this day distrained,"] on the premises above mentioned, the several goods and chattels specified in the above inventory, for the sum of L. \_\_\_\_\_, being \_\_\_\_\_ years' rent due to me, [or "to the said C. D.,"] at \_\_\_\_\_ last, for the said premises; and that unless you pay the said rent, with the charges of distraining for the same, within five days from the date hereof, the said goods and chattels will be appraised and sold according to law. Given under my hand, the day of \_\_\_\_\_, in the year of our Lord 184 .'

Witness,

' Memorandum that I, A. B., do hereby consent and agree Memorandum of the tenant's consent to landlord's continuing in possession. that C. B., my landlord, who hath distrained my goods and chattels for rent, in a dwelling-house, &c., [describing the premises,] situate at \_\_\_\_\_ in the county of \_\_\_\_\_ shall continue in possession of my said goods and chattels, in the said dwelling-house, &c., for the space of \_\_\_\_\_ days from the date hereof; the said C. D. having agreed to forbear the sale of the said goods and chattels for the said space of time, to enable me to discharge the said rent. And I, the said A. B., do hereby agree to pay the expenses of keeping the said possession. As witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_ 184 \_\_\_\_\_

You and each of you shall well and truly appraise the Appraisers' oath. goods and chattels mentioned in the inventory, [the constable at the same time holding the inventory in his hand, and showing it to the appraisers,] according to the best of your judgment. So help you God.

## To Mr. A. B.

The like for  
growing  
crops, on sta-  
tute 11th Geo.  
II., c. 19, s. 8.

Take notice, that I have this day taken and dis-  
trained [or "that, as bailiff to C. D., your landlord, I  
have taken and distrained"] on the lands and premises  
above mentioned, the several growing crops specified  
in the above inventory, for the sum of L. , &c.,  
[as in last,] for the said lands and premises; and that

Memorandum  
thereof.

Memorandum, that on the            day of            in the year  
of our Lord 1840, G. H., of, &c., and I. K., of, &c., two  
sworn appraisers, were sworn upon the Holy Evangelists, by  
me, L. M., of            , constable, well and truly to appraise  
the goods and chattels mentioned in this inventory, according  
to the best of their judgment. As witness my hand,

L. M., constable.

Present at the time of swearing the said G. H. and I. K.  
as above, and witnesses thereto.

Form of ap-  
praisement.

We, the above-named G. H. and I. K., being sworn upon  
the Holy Evangelists, by L. M., the constable above named,  
well and truly to appraise the goods and chattels mentioned  
in this inventory, according to the best of our judgment, and  
having viewed the said goods and chattels, do appraise and  
value the same at the sum of L. . As witness our  
hands, the            day of            in the year of our Lord 1840.

G. H., I K., sworn appraisers.

[The last two forms are usually written on the inventory.]

Instructions  
for making a  
distress.

The way of making a distress for rent in arrear is to go  
upon the premises for which the rent is due, and taking hold  
of some piece of furniture or other article there, to say, if the  
distress is made by the landlord himself, "I seize this chair,  
(or other thing, as the case may be,) in the name of all the  
goods and effects on these premises, for the sum of L. ,  
being            years' rent due to me at            last;" or if the  
distress be made by some person empowered by the landlord,  
say, "for the sum of L. , due to A. B., Esq., the  
landlord of these premises, at            last, by virtue of an  
authority from him to me given for this purpose." The in-  
ventory is then made, and a copy served on tenant, with the  
notice thereto annexed, or under-written; and if the rent is  
not paid, or goods replevied at the end of the seventh day,  
or other time allowed or agreed upon, the same may be ap-  
praised and sold, and any surplus, after paying rent and ex-  
penses, must be paid to the tenant.

unless you previously pay the said rent, with the charges of distraining for the same, I shall proceed to cut, gather, take, cure, carry, and lay up the said crops, when ripe, in the barn or other proper place on the said premises, and in convenient time appraise, sell, and dispose of the same, towards satisfaction of the said rent, and of the charges of such distress, appraisement, and sale, according to the form of the statute in such case made and provided.

Take notice, that by the order and on behalf of C. D., I have this day taken and distrained in and upon the farm and lands called , in your occupation, in the parish of , in the county of , all the corn, grain, and effects, in the inventory hereunder-written mentioned, for the sum of L. , being years' annuity, or rent-charge, of L. per annum, due to the said C. D. at last, and charged on, and issuing and payable out of certain manors, farms, lands, and premises, called , in the said parish of , in the county of aforesaid, of which the farm and lands first above mentioned are part and parcel. And that unless the said arrears of the said annuity, or rent-charge, together with the expenses of this distress, are paid and satisfied, the said corn, grain, and effects, will be disposed of according to law. Dated, &c. E. F.

To Mr. A. B., and all to whom it may concern.

The like for  
the arrears of  
a rent-charge.

## OBSERVATIONS ON DISTRESS FOR RENT.

The distress must not be taken until the morning after the day the rent becomes due. The time for taking.

The distress will be wrongful if taken after a tender of the rent, even if made on the land when the landlord comes to distrain. 2 Inst. 107. When wrongful.

If any distress shall be made for rent in arrear, when none in fact is due, the owner may recover. When no rent is due,

and distress taken. double the value, with costs. 2 W. and M. sess. 1, c. 5, s. 5.

Tools of a man's trade. The tools, utensils, or instruments of a man's trade or profession, though in general privileged from distress for rent, may be distrained if not in actual use at the time, and no other sufficient distress can be found on the premises. Co. Lit. 47, a; Simpson v. Hartop, Wil. 512; Garton v. Falker, 4 T. R. 565.

Cannot be made in the night. Distress for rent cannot be made in the night. 1 Inst. 142, (a.)

When clandestinely carried away. Goods fraudulently or clandestinely carried off the premises, after the rent becomes due, may, if they are the property of the tenant,\* be distrained by the landlord, or the person he authorizes, within thirty days after removal, by virtue of the 11 Geo. II., c. 19; but to justify such distress, the goods must have been removed secretly, and not openly, in the face of day, otherwise it has been decided not to be clandestine; and, consequently, not within the meaning of the act. Watson v. Main, 3 Esp. 15; 2 Saund. 284, n. 2.

As to irregularity. If the party distraining be guilty of any irregularity the distress will not be unlawful, but the party injured may recover satisfaction for the special damage in an action of trespass, or on the case, with full costs, (11 Geo. II., c. 19;) but by *ib.* s. 20, tender of amends before action brought will prevent the tenant recovering.

\* Thornton v. Adams, 5 M. and S. 38.

## CHAPTER XXIV.

### LEASES.

#### LEASE<sup>a</sup> OF A HOUSE.

THIS indenture, made, &c., between (*the lessor*,) of Parties.  
the one part, and (*the lessee*,) of the other part, witnesseth, that for and in consideration of the yearly <sup>witnessing</sup> rent hereby reserved, and of the covenants and agree-<sup>part</sup>ments hereinafter contained, on the part of the said (*lessee*,) his executors, administrators, and assigns,<sup>b</sup> to be paid and performed, he, the said (*lessor*,) hath demised and leased, and by these presents doth de-<sup>Demisee.</sup>mise and lease unto the said (*lessee*,) his executors, administrators, and assigns, all that messuage, &c., situate, &c., with the appurtenances to the same premises belonging; to have and to hold the said, &c., hereby demised, with the appurtenances, unto the said (*lessee*,) his executors, administrators, and assigns, from the                      day of                      last past, [*or*

<sup>a</sup> Leases must be in writing, except they be for a term not exceeding three years, and whereupon the rent reserved shall be at least two-thirds of the improved value, (29 Car. II., c. 3.) It may be by deed-poll or indenture, (Bac. Abr. *Leases*, n.)

<sup>b</sup> Although the word assigns may be used here, and the proviso to prevent assigning be inserted, it will not be repugnant. (See *Weatherall v. Gee*, 2 Ves. Jun. 504.)

next ensuing,] for and during, and unto the full end and term of, &c., and fully to be complete and ended.<sup>c</sup>

**Reservation.** Yielding and paying<sup>d</sup> yearly, and every year, during the said term, unto the said (*lessor*,) his executors, administrators, and assigns, the yearly rent or sum of L.      of lawful money of Great Britain, by four equal quarterly payments, on the usual days of payment in the year; that is to say, the      day of, &c., and the      of, &c., free and clear of and from all parliamentary or parochial taxes, rates, and assessments whatsoever; the first payment thereof to begin and be made on the, &c., next ensuing the date of these presents. And the said (*lessee*) doth hereby for himself, his heirs, executors, and administrators, covenant,<sup>e</sup> promise, and agree to and with the (*lessor*,) his heirs and assigns, in manner following; that is to say, that he, the said (*lessee*,) his executors or administrators, or some or one of them, shall and will yearly, and every year, during the said term, well and truly pay, or cause to be paid, unto the said (*lessor*,) his heirs or assigns, the yearly rent<sup>f</sup> or sum of

**Covenant for payment of rent.**

<sup>c</sup> If to be determined at a certain period of the term, say, "determinable nevertheless as hereinafter mentioned."

<sup>d</sup> The rent may be reserved generally, without saying to whom: the law will make the distribution, (Plow. 171.)

**The usual covenants.** <sup>e</sup> The usual covenants, in the absence of any agreement to the contrary, are, that the lessee shall pay the rent and taxes, keep the premises in tenantable repair, with leave for the lessor to enter and view, and for the lessee to amend on notice; and that lessee will quietly yield up the premises at the end of the term; with a proviso for re-entry on non-payment of the rent, or non-performance of the covenants; and, lastly, a qualified covenant for the lessee's quiet enjoyment.

**For payment of rent.** <sup>f</sup> The covenant for payment of the rent will enable the landlord to sue the tenant by action, in case of no distress being found upon the premises sufficiently available. The tenant may deduct ground-rent paid by him; *Sapsford v. Fletcher*, 4 T. R. 511; and also land-tax, (33 Geo. III., c. 5, s. 17,) unless he has undertaken to pay all taxes, in which case, he will be bound to pay the land-tax; *Amfield v. White*, 1 Ryan and Moody, 246; *Giles v. Hooper*, Carth. 135.

L. hereinbefore reserved, upon the days and times, and in manner and form, hereinbefore appointed for payment thereof, according to the true intent and meaning of these presents. And also that he, the said (*lessee*,) his executors, administrators, and assigns, shall and will, &c., *pay taxes,<sup>c</sup> and repair, &c.;<sup>b</sup> and the same so repaired yield up,* (see p. 104,) *and insure against fire,<sup>i</sup>* (see p. 108.) And moreover, that it shall and may be lawful to and for the said (*lessor*,) his heirs or assigns, or his or their agent or agents, either with or without workmen or others in his or their company, (twice in every year during the said term,) at all seasonable times in the day-time, without the molestation or interruption of the said (*lessee*,) his heirs, executors, or administrators, to enter<sup>k</sup> and come into and upon the said demised premises, and every or any part thereof to view, search, and see the state and condition of the same, and of the repairs and amendment thereof, and of all such defaults, decays, and want of repair, which upon any such view or views shall be found, to give or leave notice in writing, or otherwise, at the said demised premises, unto and for the said (*lessee*,) his executors, administrators, and assigns, to repair and

To repair.

To insure.

Liberty for lessor to enter and view the state and condition.

And for landlord to leave notice of the want of repairs.

<sup>c</sup> The goods of an incoming tenant are liable for taxes growing due before his time; and as the landlord would be expected to indemnify him from the same, this covenant would enable the landlord to recover from the late tenant.

<sup>b</sup> If the lessee covenants to repair generally, without any exception as to accidents by fire, he will be bound to rebuild the premises in case they are burnt down; *Bullock v. Dommit*, (6 T. R. 650;) it is therefore usual to add an exception as to accidents by fire. In the absence of any agreement, neither the lessor nor his tenant are bound to rebuild in case of destruction by accidental fire; 6 Anne, c. 31, s. 67; *Bayne v. Walker*, 3 Dow. 283.

<sup>i</sup> The covenant to insure in a specific sum will not limit the amount which the tenant is bound to expend in rebuilding in case of fire; *Digby v. Atkinson*, (4 Camp. 275.)

<sup>k</sup> Without leave of entry to view, the landlord would be a trespasser.



And the lessee covenants to do the same within the time mentioned in the notice.

Lessee not to carry on offensive trade.

Nor to assign without the consent of the lessor.

Proviso for re-entry.

For peaceable possession on performing the covenants.

amend the same within the time or space of one calendar month next after such notice thereof shall be given or left as aforesaid; within which time the said (*lessee*,) for himself, his executors, administrators, and assigns, doth hereby covenant, promise, and agree to and with the said (*lessor*,) his heirs and assigns, to repair and amend all such defaults and want of reparation whereof such notice shall be so given or left as aforesaid. And also, that he, the said (*lessee*,) his executors, administrators, and assigns, shall not, &c., [*against offensive trades*.]<sup>1</sup> And the said (*lessee*) doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, declare, and agree to and with the said (*lessor*,) his heirs and assigns, that he, the said (*lessee*,) his executors or administrators, shall not nor will at any time hereafter, during the said term hereby granted, assign,<sup>m</sup> set over, or part with this present indenture of lease, or lease, set, or demise the same premises, or any part thereof, for the whole or any part<sup>n</sup> of the said term, unto any person or persons whomsoever, or cause or procure, permit or suffer the said premises, or any part thereof, to be held, had, used, occupied, or enjoyed, by any other person or persons whomsoever, without the licence and consent in writing of the said (*lessor*,) his heirs or assigns. Provided always,<sup>n</sup> [*Here add the usual proviso for making void the lease upon the non-performance of, &c.; and for peaceable possession on performance of the covenant.* (See p. 81.) Or

<sup>1</sup> Letting lodgings is not a breach of a covenant not to underlet without licence; *Doe v. Laiming*, 4 Camp. 77.

<sup>m</sup> The covenant not to assign is not understood as a common and usual covenant; it should therefore be expressly stipulated for in agreements for leases; ante, p. 16.

<sup>n</sup> An underlease is a breach of a covenant not to assign for any part of a term. *Doe v. Worsley*, 1 Camp. 20.

<sup>n</sup> If the proviso extends only to a right of re-entry, the lease may be confirmed by acceptance of rent, after the landlord has notice of the breach of condition; (1 Saund. 287. n. 16.)

*proviso for determining the lease at the end of a certain number of years. (See p. 79.)*] In witness, &c.

UNDER-LEASE OF A HOUSE IN LONDON, WITH  
FIXTURES.

This indenture, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part, witnesseth, that for and in consideration<sup>o</sup> of the yearly rent hereby reserved, and of the covenants and agreements herein contained, on the part of the said C. D., his executors, administrators, and assigns, to be paid, observed, and performed, he, the said A. B., hath demised and leased, and by these presents doth, &c., unto the said C. D., his executors, administrators, and assigns, all, &c., together with all cellars, vaults, areas, and appurtenances, to the said premises belonging; and the goods, fixtures, and things mentioned in the schedule hereunder-written, (except and always reserved out of this demise, the free passage and running of water and soil from the other houses and buildings of his grace the duke of B., and his tenants, by and through the channels and drains of the said hereby demised premises, the tenant or tenants of such other houses and buildings, on request, paying his or their share and proportion of the charges of cleansing and repairing the same, as need shall require :) To have and to hold the said piece or parcel of ground, messuage, or tenement, and all other the premises hereby demised, with their appurtenances, (except as aforesaid,) unto the said C. D., his executors, administrators, and assigns, from the 29th day of September next ensuing, for

Consideration.

Demise.

Exception of a passage for water and for cleansing same.

Habendum.

<sup>o</sup> If a consideration be given by lessee for good-will, add, "and in consideration of the sum of, &c., by, &c., to, &c., the receipt, &c., and in consideration of the yearly rents," as above.

Taxes.

And to keep  
premises in-  
sured from  
fire.

And to keep }  
premises in  
repair.

And to yield  
up the same  
at the end  
of the time in  
such good re-  
pair.

and during, and unto the full end and term of twenty-one years, fully to be complete and ended ; yielding and paying, &c.<sup>p</sup> [Add a covenant for payment of rent.] And also shall and will, during the said term, bear, pay, and discharge the land-tax, sewers' rates, and all other taxes, rates, duties, and assessments whatsoever, whether parliamentary, parochial, or otherwise, now, or which, at any time or times during the said term, shall be taxed, rated, charged, or assessed on the said premises hereby demised, or any part thereof, or upon the landlord or tenant in respect thereof, or of the rent hereby reserved ; and also shall and will, during the said term, when need shall require, bear, pay, and allow a reasonable share with the other tenants of supporting, repairing, cleansing, amending, and rebuilding all party-walls, gutters, sewers, drains, and cesspools, belonging to the said premises.<sup>q</sup> And also shall and will, at all times during the said term, keep the said premises insured<sup>r</sup> from loss or damage by fire, in the sum of L. at the least, in the fire-office, or such other public office for insurance in London or Westminster as the said C. D., his executors, administrators, or assigns, shall from time to time appoint ; and when thereunto required, produce the current year's receipt for the premium for such insurance to the said C. D., his heirs, executors, administrators, or assigns, or her, his, or their steward or agent. And also that the said C. D., his executors, administrators, or assigns, shall and will, at his and their costs, at all times during the said term, when need shall require, well and sufficiently repair, support, amend, pave, paint, cleanse, and keep the said premises, with the appurtenances, with all manner of needful and necessary reparations, cleansings, and amendments whatsoever. And the said premises so

<sup>p</sup> See p. 47.

<sup>q</sup> For a proviso not to assign, if intended, &c. see p. 82.

<sup>r</sup> See note<sup>a</sup> to p. 405.

being well and sufficiently repaired, supported, amended, paved, painted, cleansed, and kept, together with all the doors, wainscots, shelves, dressers, drawers, locks, keys, bolts, bars, staples, hinges, hearths, chimney-pieces, mantle-pieces, chimney-jambs, foot-paces, slabs, covings, windows, sashes, shutters, partitions, sinks, pumps, pipes, water-closets, rails, and all other things which now are, or which at any time during the said term shall be, fixed or fastened to, or set up in or upon the said premises, or any part thereof, or belonging thereto, shall and will, at the expiration, or other sooner determination of the said term, which shall first happen, peaceably yield up to the said A. B., his executors, administrators, or assigns, together with the several fixtures and things mentioned and described in the schedule hereunder written, in the same plight and condition as they are now in, (reasonable use and wear thereof in the meantime, and casualties by fire only excepted.) And moreover, that it shall be lawful for the said A. B., his executors, administrators, or assigns, and for his and their steward, surveyors, workmen, and others employed by him or them, twice in every year, or oftener, during the said term, in the day-time, to enter into the said premises, or any part thereof, to search and see the decays and want of reparation and amendment in and about the same; and of the decays, defects, and wants of reparation and amendment there found, to give and leave notice in writing, on or at the said premises, for the amendment thereof; and that the said C. D., his executors, administrators, or assigns, shall and will, within three months next after every such notice, well and sufficiently repair, amend, and make good all such decays, defects, and wants of reparation and amendment, whereof notice shall have been so given or left, and all other decays, defects, and wants of reparation and amendment whatsoever. And also, that no erection or building whatsoever shall at any time during the said term be erected in

Landlord to enter and view as to decays, &c.

Tenant to make no erection.

Tenant to make no alteration without consent of landlord.

Tenant to suffer no nuisance to stop window lights.

Tenant to permit no trades to be carried on creating a nuisance on premises.

No auctions or public sales to be held upon the premises, nor used as a police-office or brothel. Proviso for re-entry, in case of default of payment of rent.

or over the yard or ground behind or belonging to the area of the said messuage or tenement hereby demised, or in or over any part or parts thereof respectively. And also, that no alteration or addition shall, at any time during the said term, be made in or to the height, front, sides, roof, walls, timber, or elevation of the said messuage or tenement and premises hereby demised, without the consent in writing of the said A. B., his executors, administrators, or assigns, or his or their steward or agent for the time being. And also, that no act, matter, or thing whatsoever, shall at any time during the said term be done in or upon the said premises, or any part thereof, which shall or may be, or grow to the annoyance, nuisance, grievance, damage, or disturbance of the said C. D., his executors, administrators, or assigns, or whereby the window or lights belonging to any messuage, tenement, or building, being the estate of the said A. B., his heirs or assigns, shall or may be in any manner stopped or obstructed. And also, that the trades or businesses of a brewer, baker, sugar-baker, vintner, victualler, butcher, tripe-seller, poulterer, fishmonger, cheesemonger, fruiterer, herb-seller, coffee-house-keeper, distiller, dyer, brazier, smith, tinman, farrier, dealer in old iron or second-hand clothes, or second-hand boots or shoes, pipe-burner, melting or other tallow-chandler, soap-boiler, blacking-maker, working hatter, or working cooper, shall not, at any time or times, during the said term, be carried on, in or upon the said premises. And also, that no auctions or public sales of household goods, or other things, shall at any time or times during the said term, be had or made in or upon the said premises, or any part thereof. And also, that the said premises shall not be used or occupied at any time or times during the said term as or for a police-office, or as or for a shop for the sale of coals, potatoes, or any provisions whatsoever, or as a brothel. Provided always, and it is hereby agreed, that if the yearly rent hereby reserved, or any part thereof,

shall be unpaid for the space of fifteen days next after any of the days of payment whereon the same ought to be paid as aforesaid, or on breach, neglect, non-performance, or non-observance of any of the covenants, stipulations, restrictions, and agreements hereinbefore contained, then and from thenceforth, and in either of such cases, it shall be lawful for the said A. B., his executors, administrators, or assigns, into the said premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, repossess, and enjoy, as if this lease had never been made. And the said A. B. for himself, his executors, administrators, and assigns, doth covenant and agree with the said J. G., his executors, administrators, and assigns, that he and they paying the rent hereby reserved, and performing and observing the covenants, stipulations, restrictions, and agreements hereinbefore contained, shall and may peaceably hold and enjoy the said premises hereby demised during the said term, without the lawful let, suit, forcible eviction, or interruption of the said C. D., his executors, administrators, or assigns, or of any person or persons lawfully claiming, or to claim by, from, or under him, them, or any of them. In witness, &c.\*

Covenant  
for tenant  
to enjoy, on  
performing  
covenants.

## LEASE OF AN INN AND PREMISES IN MORTGAGE.

*(In which the Mortgagee and Mortgagor concur, with a Power for Lessee to determine the same at the End of the first Seven Years.)*

This indenture, made, &c., between A. B., of, &c., *(mortgagee of the capital messuage, tenement, or inn, &c., hereinafter demised,)* of the first part; C. D.,

\* In this lease the usual and proper covenants for leases of houses in London are inserted; and the same may be applied to an original lease by making the reservation and covenants to the landlord, his heirs and assigns.

(*the mortgagor*,) of, &c., of the second part; and E. F., of, &c., of the third part; Witnesseth, that for and in consideration of the rents, covenants, conditions, and agreements hereinafter reserved and contained, and which on the part and behalf of the said E. F., his executors, &c., are or ought to be paid, done, and performed, he, the said A. B., at the request and by the direction and appointment of the said C. D., testified, &c.; and also, the said C. D. have, and each of them hath demised, leased, set, and to farm let, and by these presents do, &c., unto the said E. F., his executors and administrators, all that capital messuage, tenement, or inn, commonly called or known by the name or sign of —, with the houses, outhouses, tap-room, coach-houses, stables, yards, buildings, gardens, and appurtenances thereto belonging, situate, &c., together with all

Premises.

Habendum.

Rent.

ways, &c. To have and to hold the said capital messuage, &c., unto the said E. F., his executors, &c., from, &c., for and during and until the full end and term of twenty-one years from thence next ensuing, &c.,<sup>†</sup> yielding and paying therefore yearly, and every year during the continuance of the said term hereby granted unto him, the said A. B., his heirs, executors, &c., the yearly rent or sum of L. of lawful, &c., (see p. 47;) subject to such equity of redemption as the said demised premises are now subject or liable to, and subject also to the proviso or agreement hereinafter contained, in respect to the intermediate payment of the same rent, until such request or notice, as hereinafter mentioned; such yearly rent or sum of L. to be paid by four quarterly payments, &c. Provided, nevertheless, &c., that, in the meantime, and until the said [*mortgagee*,] his heirs, executors, administrators, or assigns, shall, by notice in writing, require the said E.

<sup>†</sup> If determinable at a certain period of the term, add, "determinable nevertheless by the said E. F., his executors, &c., as hereinafter mentioned."

F., his executors, administrators, or assigns, to pay the said hereby reserved rent to him or them, he, the said E. F., his executors, administrators, or assigns, shall pay, or cause to be paid, the said rent, or the quarterly payments thereof, to the said C. D., his heirs, executors, administrators, or assigns, for his and their own use and benefit; and that the receipt or receipts in writing of the said C. D., his heirs, executors, administrators, or assigns, shall be a good and valid discharge for such payments of the said annual-rent, as shall have accrued due and been actually paid to him or them previous to such requisition or notice being given as aforesaid. [*Add a proviso that till notice C. D. may distrain, and for re-entry on non-payment of rent, &c.* See p. 81.]

And the said E. F. doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said A. B., his heirs, executors, &c., and also as a distinct covenant, with and to the said C. D., his heirs, &c., that he, the said E. F., his executors, administrators, or assigns, shall and will, from time to time, and at all times hereafter, during the continuance of the said term, pay, or cause to be paid, unto the said C. D., his heirs, executors, administrators, or assigns, until such notice or request, as aforesaid, shall be given, and afterwards to the said A. B., his heirs, executors, administrators, or assigns, the aforesaid yearly rent or sum of L. hereinbefore reserved, as the same

shall respectively become due and payable, at the times and in manner hereinbefore mentioned and appointed for the payment thereof, according to the true intent and meaning of these presents. [*Add Taxes.*

*covenants to pay taxes, and to repair, and to deliver up premises so repaired at the end of the term, and power for landlord to enter and view, &c.* (See pp. 103 and 405.)]

And also, that he, the said E. F., his executors, &c., shall and will from time to time, during the continuance of the said term, keep open and use the said capital messuage, tenement, or inn,

To use premises as an inn, &c.



Licence.

For quiet enjoyment, see p. 108.

To pay a sum on taking down buildings, &c.

To take beer of landlord.

Determinable at a certain period.

tap-room, coach-houses, stables, and premises, with the appurtenances, as and for an inn, for the reception, accommodation, and entertainment of travellers, guests, and other persons resorting thereto with or without horses, cattle, and carriages. And also shall and will, from time to time, annually, at the proper times for the purpose, apply for, and use his best endeavours to obtain, all such licences, at his or their own expense, as are or may be necessary for carrying on and keeping the same premises open as and for an inn as aforesaid. And shall not nor will do, or commit, or permit, or suffer to be done or committed, in or about the said premises hereby demised, at any time or times during the continuance of the said term hereby granted, any act, matter, or thing whatsoever, whereby or by means whereof any licence or licences, so to be granted, shall or may be forfeited, or become void or liable to be taken away, suppressed, or suspended, in any manner howsoever, &c.<sup>u</sup> [*Add a covenant by the mortgagor for quiet enjoyment against the acts of himself and mortgagee, or if the latter will consent to do so, a covenant from himself.*] And also, that he, the said C. D., his heirs, &c., shall and will well and truly pay, &c., unto the said E. F., his executors, &c., the said sum of L. at the end of the first years of the said term, in case the said E. F., his executors, &c., shall have taken down the said dwelling-house and buildings now in the occupation of, &c., and shall have erected, built, and finished, on the site thereof, one good and sufficient dwelling-house, consisting of rooms, in a good, substantial, and workmanlike manner, agreeably to, &c.<sup>v</sup> In witness, &c.

<sup>u</sup> If the lessor of the inn be a brewer, a covenant may be added for buying the beer from him. See p. 107.

<sup>v</sup> If determinable at a certain period, add, "And, lastly, it is hereby covenanted and agreed by and between all the said parties hereto, and it is the true intent and meaning of them and of these presents, that if the said E. F., his ex-

## A CONCISE FORM OF A LEASE OF A FARM.

This indenture, made, &c., between A. B., of, Parties.  
 &c., of the one part; and C. D., of, &c., of the  
 other part; Witnesseth, that, in consideration of the Considera-  
 yearly rent hereinafter reserved, and of the cove- tion.  
 nants and agreements hereinafter contained, which,  
 on the part of the said C. D., his executors, admini-  
 strators, and assigns, are or ought to be paid, obser-  
 ved, performed, and kept, he, the said A. B., hath Demise.  
 demised, leased, set, and to farm let, and by these pre-  
 sents doth, &c., unto the said C. D., his executors, ad- Premises.  
 ministrators, and assigns, all that messuage or tene-  
 ment, situate, &c., and all those several pieces or parcels  
 of land, meadow, and pasture-ground, situate in, &c.,  
 aforesaid, called or known by the names of, &c. All  
 which said messuage or tenement, lands, and premises,  
 contain in the whole, by estimation, acres or there-  
 abouts, be the same more or less, and are now in the  
 holding of, &c.; together with all tenantable rights,  
 privileges, and appurtenances, to or with the same  
 premises, or any part thereof, belonging, used, or in  
 anywise appertaining, (except" and always reserved Exceptions.  
 to the said A. B., his heirs and assigns, all woods,  
 underwoods, trees, mines, and quarries, upon or under

cutors, &c., shall be minded and desirous to quit, yield, and  
 give up the possession of the said capital messuage, &c.,  
 hereby demised, at the end of the first (*seven*) years of the  
 said term hereby granted, and shall give or leave full six  
 months' previous notice in writing, under his or their hand  
 or hands, of such his or their mind and intention, unto or  
 for the said C. D., his heirs, &c., at his or their then place of  
 abode, then and immediately after the expiration of the said  
 term of (*seven*) years this present indenture, and the term  
 and estate hereby created, shall cease, determine, and be-  
 come utterly void, to all intents and purposes whatsoever,  
 any thing herein contained to the contrary thereof in anywise  
 notwithstanding."

\* For other exceptions, see p. 41 and seq.

the said premises, with free liberty to fall, cut down, convert, cord, coak, and carry away the said trees, and to bore, dig for, and carry away the said mines and quarries, doing as little damage as may be, and making reasonable satisfaction for such damage; and also free liberty to hunt, course, shoot, net, fish, and otherwise sport upon the said premises, at his or their will and pleasure.) To have and to hold<sup>\*</sup> the said messuage or tenement, lands, and all other the premises hereby demised, or intended so to be, with the appurtenances, (except as is before excepted,) unto the said C. D., his executors, administrators, and assigns, from the 25th day of March last, for and during and unto the full end and term of, &c., thence next ensuing, and fully to be complete and ended; yielding and paying<sup>7</sup> yearly, and every year during the term hereby demised, unto the said A. B., his heirs and assigns, the rent or sum of L. of lawful money of Great Britain, at two usual days of payment of rent; (that is to say,) the 29th day of September and 25th day of March, by even portions, without any deduction or abatement for taxes or otherwise, (except the land-tax;) and also yielding and paying unto the said A. B., his heirs and assigns, above the said yearly rent before reserved, the additional rent of L. of like lawful money, for every acre of meadow or pasture-land hereby demised, which the said [*tenant*,] his executors, administrators, or assigns, shall at any time during the said term hereby granted plough, till, dig, break up, sow, convert into, have, or use, in tillage, or cause or permit to be ploughed, tilled, had, digged, broken up, sown, converted into, had, or used in tillage, without the consent in writing of the said A. B., his heirs or assigns, first obtained, and so in proportion for any greater or less quantity than an acre thereof, which, during the said term, shall not be cultivated and

**Habendum.**

**Reservation.**

**Further reservation.**

<sup>\*</sup> For Habendums in Leases, see p. 45.

<sup>7</sup> See Reservations, p. 47.

manured in all respects according to the covenants and agreements hereinafter contained, (without the consent of the said A. B., his heirs or assigns, in writing first had and obtained for that purpose;) the said additional rents to be first paid on the 25th day of September next after the same shall first become due, and to continue payable yearly during the continuance of the said term, without any restriction or abatement whatsoever. [*Add covenants\* to pay the rent, and keep premises in repair. (See p. 103.)*]

And also, that the said C. D., during the said term, shall and will consume by the mouths of cattle or otherwise, upon some part or parts of the said premises, all the hay, straw, and stover, which during the said term shall grow upon, or be gotten off or from the said premises, or any part thereof; and shall and will, in an husbandlike manner, lay, spread, spend, and bestow upon the said premises, all the muck, dung, manure, and compost, which during the same term shall be made upon or arise from the said premises, or else leave the same, at the expiration or other sooner determination of the said term, for the use of the said A. B., his heirs or assigns, without requiring any satisfaction for the same. And also, that he, the said C. D., his executors, administrators, or assigns, shall not nor will take more than three crops from any part of the said demised premises, during any one course of tillage; and upon every breaking up of any part of the said lands, shall and will convert the same into a good summer fallow, with not less than five ploughings, and sufficient harrowings between each ploughing, such ploughings to be performed between the months of May, June, and July; and shall and will manure each fallow with well-reduced rotten muck or dung, at the rate of fifteen cart-loads, each load to contain one cubical yard, or with eighty bushels of well-burnt clod lime, or sixteen cart-loads of marl, to every acre, and so in

Proviso for re-entry in default, &c.  
Covenant to pay rent.  
To consume by mouths of cattle, hay and straw.

And to spread all the muck on premises.

Not more than three crops during one course of tillage.

\* For Covenants in Leases, see p. 103.

Winter-corn  
crop.

To cultivate  
lands in an  
husbandlike  
way:

Landlord or  
incoming  
tenants to enter, to pin-fallow in the November preceding expiration of term;

and to take in hand all the meadow on the 2d of February preceding, &c.

proportion to a greater or less quantity thereof. And shall and will sow the same with wheat or winter-corn crop at the following winter-corn seedness, and at the spring seedness next after such wheat or winter-corn crop, shall and will lay down the same with barley or oats, and good sound clover-seed, after the rate of one strike and a half to every acre, and so in proportion to a greater or less quantity thereof; and in manner aforesaid shall and will in every year of the said term lay down not less than seven acres of the said demised premises. And also, shall and will in all respects cultivate, manure, use, and manage the said premises, and every part thereof, during the said term, according to the course of good husbandry. And also, shall and will well and sufficiently hay up and fence in, previous to the 2d day of November next before the expiration or other sooner determination of the said term, all such land as shall have been clovered down the preceding Lent seedness, and shall not afterwards suffer any cattle or sheep to be turned into the same, or permit the same to be otherwise injured; in consideration whereof, he or they shall receive or be allowed out of the last year's rent the prime cost of such clover and grass-seeds. And also, that it shall be lawful for the said A. B., his heirs or assigns, or his or their succeeding tenant or tenants, and his, their, or any of their agents, servants, and workmen, to enter into and upon the said premises, or any part thereof, at all times in and after the month of November next before the expiration or other sooner determination of the said term, to pin-fallow, hedge, ditch, and do all such other acts as shall be necessary for the proper cultivation thereof. And also to enter and take into his or their hands all the meadow or usual mowing-ground belonging to the said demised premises, on the second day of February next before the expiration or other sooner determination of the said term, without any abatement of rent, or other recompence for the same. [*Insert proviso for re-entry*

*on non-payment of rent, and non-performance of covenants.* (See p. 81.)] And the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said C. D., his executors, administrators, and assigns, in manner following; (that is to say,) that he, the said A. B., his heirs or assigns, shall and will, before the 20th day of August next ensuing the date hereof, put the said demised messuage and buildings in good tenantable order and repair. And also shall and will appoint and allow the said C. D., his executors, administrators, or assigns, a convenient boozey pasture, for the purpose of eating and consuming the hay, straw, and fodder, arising from the said premises, until the 1st day of May next after the expiration, or other sooner determination of the said term, without making any satisfaction for the same; and that the said C. D., his executors, administrators, and assigns, paying the rents, &c., peaceably to enjoy, &c. (See p. 108.) And, lastly, it is hereby agreed and declared, that the said C. D., his executors, administrators, and assigns, shall be entitled to such winter-corn as, according to the regulations aforesaid, ought to be sown, and shall be growing upon the said demised premises at the expiration or other sooner determination of the said term, and shall get in and thrash the same in the barn there, and the said barn to be emptied thereof before the 1st day of May next following the harvest or reaping thereof, and the straw and chaff thereof to be left properly collected upon the said premises for the use of the said A. B., his heirs and assigns, without any satisfaction for the same. In witness, &c.

Lessor to put the premises in repair by a certain time.

Lessee to have a boozey pasture.

Lessee to be entitled to winter-corn.

A SHORT LEASE OF A PIECE OF LAND, FROM HUSBAND AND WIFE,\* THE PROPERTY OF THE WIFE.

This indenture, made, &c., between A. B., of, &c., Parties.

\* Where lands belong to the wife, the rent must be

Consideration.

Habendum.

Rent.  
Proviso, in  
default of  
payment of  
rent, to re-  
enter.

And to use  
lands in a hus-  
bandlike man-  
ner.

and M. B., his wife, (before her marriage with him called M. S.,) of the one part; and C. D., &c., of the other part; Witnesseth, that, in consideration of the rent hereby reserved, and of the covenants, provisos, and agreements hereinafter contained, on the part and behalf of the said C. D. to be paid, done, and performed, they, the said A. B. and M., his wife, have granted, demised, and to farm let, and by these presents do, &c., unto the said C. D., his executors, administrators, and assigns, all, &c., together with all and singular paths, &c. To have and to hold the said pieces or parcels of land, hereditaments, and premises, intended to be hereby demised, with the appurtenances, unto the said C. D., his executors, administrators, and assigns, for and during the term of, &c., now next ensuing, and fully to be complete and ended; yielding and paying therefore yearly, and every year during the continuance of this demise, unto the said A. B. and M., his wife, and the heirs of the said M., the yearly rent of, &c. Provided always, and it is hereby declared, that in case the said yearly rent of, &c., or any part thereof, shall happen to be behind or unpaid by the space of thirty days next after the same shall become due and payable, (being lawfully demanded,) that then, and in such case, it shall and may be lawful to and for the said M., his wife, and her heirs, into the said messuage, &c., to re-enter, and the same to have again, repossess, and enjoy, as in his, her, or their former estate, any thing herein contained to the contrary notwithstanding. [*Add a covenant by C. D. with the said A. B. and M., his wife, and her heirs, to pay the rent and taxes, and other usual covenants. (For which see p. 103, and preceding leases.)*] In witness, &c.

reserved to the husband and wife and the heirs of the wife, and the term must commence from the making of the lease, if for lives not exceeding three, or years not exceeding twenty-one, (38 Hen. 8, c. 28.)

## CONDITIONS FOR THE LEASE OF A FARM. 421

### SHORT FORM OF A LEASE OF A HOUSE.

This indenture, made, &c., between A. B., of, &c., Parties.  
 for himself, his heirs and assigns, of the one part,  
 and C. D., for himself, his executors, administrators,  
 and assigns,<sup>b</sup> of the other part; Witnesseth, that, in  
 consideration of the yearly rent and covenants here-  
 inafter reserved and contained, on the part and be-  
 half of the said C. D. to be paid, observed, and per-  
 formed, he, the said A. B., doth demise and lease Demise.  
 unto the said C. D., all, &c., with the rights, mem-  
 bers, and appurtenances thereunto belonging. To have  
 and to hold the said, &c., with the appurtenances,  
 unto the said C. D., from, &c., for and during the  
 term of, &c.; yielding and paying therefore yearly Reservation.  
 during the said term unto the said A. B. the yearly  
 rent of, &c., by four quarterly payments in the year;  
 (that is to say,) the      day of, &c., the      day of,  
 &c., and, &c., the first payment to begin and be made To pay rent.  
 on the      day of, &c., next ensuing. And the said  
 C. D. doth hereby covenant with the said A. B., that  
 he, the said A. B., shall and will, &c., (*to pay rent.*)  
 Provided always, &c., (*to re-enter in default of pay-* Proviso for  
*ment of rent, or non-performance of the covenants.*) re-entry.  
 [*Add a covenant from the tenant to repair the pre-* Covenants.  
*mises, and to yield up the same in tenantable repair*  
*at the end of the term; and a covenant from land-*  
*lord for the peaceable possession.] (For other cove-*  
*nants, see Lease, p. 407.)* In witness, &c.

### CONDITIONS FOR THE LEASE OF A FARM.

Conditions for a lease<sup>c</sup> to be made and granted by

<sup>b</sup> In the subsequent part of the lease it will be only re-  
 quisite to mention the names of the parties, without adding  
 their representatives.

<sup>c</sup> Or if from year to year, say, "conditions for letting"  
 of, &c.



A. B., Esq., to C. D., of, &c., of all that messuage and farm called B., situate, &c., and containing, &c., as under.

Arable.	Meadow.	Pasture.
Names of Fields. A.B.P.	Names of Fields. A.B.P.	Names of Fields. A.B.P.

**Tenancy.** The premises to be held for \_\_\_\_\_ years,<sup>d</sup> commencing from the \_\_\_\_\_ day of \_\_\_\_\_, at and under the yearly rent of L. \_\_\_\_\_, determinable, &c.

**Reservations of ingress, &c.** *Landlord*—to reserve liberty to enter for the purpose of viewing the state and condition of the premises.

**Of timber.** Also to reserve all timber and other trees, wood and underwood, with privilege for his servants and workmen to fell, convert, and carry away the same, and to dig saw-pits for the converting thereof.

**Of mines.** And also to reserve all mines, minerals, stones and quarries, with power to work, get, and carry away the same.

**Of game.** And also to reserve all the game and fish on the premises, with liberty to sport thereon, doing no wilful damage.

**Times of payment of rent.** *Tenant*—to pay the rent quarterly without any abatement, (except land-tax and chief-rent.)

**Additional rents.** And also the additional rent of L.40 for every acre of meadow or pasture-land ploughed or broken up, or sowed with hemp, rape, or flax-seed.

The further rent of L.20 for every acre of the clover, meadow, or pasture grounds that shall not be properly manured, or which the tenant shall wilfully mow for more than two years, (except in the alternate routine of his land, or according to the quality of the same,) without manuring the same.

<sup>d</sup> Or say, "from year to year, commencing," &c.

## CONDITIONS FOR THE LEASE OF A FARM. 423

And also the rent of L.20 for every acre of the said land which the tenant shall not use according to the course of good husbandry. The first payment for the said additional rents (if any) to commence upon such of the said quarterly days as shall next happen after such rents shall become payable, during the continuance of the said term, (determinable as aforesaid.)

*Tenant*—to pay all tithes, taxes, and impositions **Taxes** payable during the said term, (determinable as aforesaid,) except land-tax and chief-rent, (if any.)

*Tenant*—to keep and leave in good order and repair the buildings, windows, doors, pales, wickets, gates, and fences whatever, belonging to the said premises, being allowed timber in the rough, bricks, stone, slate, and lime, for such purpose; tenant conveying the same at his own expense. And also in the cold and wet parts of the farm, to make good and sufficient ditches, at least four feet wide from the centre of the hedge, and three feet deep, or of a proper depth according to the situation, for the purpose of conveying the water from off the same; and, as often as need or occasion shall require, cleanse the same.

*Tenant*—to permit landlord to view the premises, and in case tenant shall neglect to do any of the repairs after having had one month's notice thereof, the landlord to be at liberty to do the same, and charge the costs thereof to the tenant, who shall pay the same at the first rent-day following; in default of which the landlord to recover the same by distress, as in case of rent in arrear, or otherwise in the nature of liquidated damages.

*Tenant*—to preserve all the timber and other trees growing upon the said premises from being damaged or otherwise injured, under the penalty of L.5; and to preserve all the hedges on the premises, and only to plash them at proper seasons of the year, and when the land is in tillage; and to leave all the young saplings that are likely to make timber; and to give

To keep premises in repair.

To permit landlord to view.

To preserve the timber and trees.

notice to landlord, or his agent, in the months of September and October in each year, of all hedges intended to be plashed that season, so that such saplings may be marked to stand; and tenant to forfeit L.5 for every one that may wilfully or negligently be injured or destroyed.

Not to mow  
pasture or  
clover-ground  
twice in any  
one year.

*Tenant*—not to mow any of the pasture or clover-ground twice in any one year, so that he shall not be entitled to mow his clover seed for a crop of hay, in case the season should not permit the seeding of the same; and in case he shall mow any of the pasture or clover-ground for two years together, tenant shall, in every such case, manure the same by laying twelve good cart-loads of rotten dung, or other good manure, to each and every acre; (or thus, “with twelve yards of good rotten dung, or with twenty yards of well-prepared compost, containing six yards of rotten dung, and two and a half tons of well-burned lime to each and every acre, or fertilize the same by means of water, to the satisfaction of the landlord.”)

Not to take  
more than  
one crop of  
grain or pulse  
from off any  
of the land  
before the  
same shall be  
summer-fal-  
lowed.

*Tenant*—not to take more than one crop of grain or pulse from off any of the land allowed to be ploughed on the breaking up thereof, before the same shall be well, properly, and in an husbandlike manner, summer-fallowed; which fallow to be performed in the next summer by at least four ploughings; and sufficient harrowings between each ploughing, one such ploughing to be done before the month of April, and the others before, &c.; and not to take more than one crop after such fallow before the same shall be laid down again, except a turnip crop, (to be well hand-hoed,) or some other vegetable, (potatoes excepted,) to be eaten or consumed on the premises in a green state, or ploughed under for manure; the land so fallowed to be sown with barley the spring following, then to be laid down with 14lbs. of good sound seeds per acre.\*

\* Here may be added: “in the following proportions,

## CONDITIONS FOR THE LEASE OF A FARM. 425

*Tenant*—to manure the lands when fallowed with twelve good cart-loads of well-reduced rotten dung, or two waggon-loads of well-burnt lime, (or say, “with fourteen cubical yards of well-reduced rotten dung, or five tons of well-burnt lime,”) to each acre, or with some other purchased manure of equal value thereto.

To manure the land when fallowed.

*Tenant*—to use and employ all the lands (not hereinbefore restricted from being ploughed) in the best and most approved mode of husbandry, adapted and suited to the nature and quality of the lands, making equal odd marks of different kinds of grain and fallow every year.

To use the lands in the most approved mode.

*Tenant*—not to sow any rape, flax, or hemp-seed.<sup>f</sup>

Not to sow rape-seed, &c.

*Tenant*—to spend yearly all the straw, fodder, and haum, properly reduced into muck, on the premises, in the fold-yard, and on such parts of the premises as most needs the same; and, at the end of the term, leave in the fold-yard all the straw and compost, fodder, and muck, for the benefit of the landlord or his incoming tenant, without any remuneration for the same.<sup>g</sup>

To spend straw, &c., on the premises.

viz. 5lbs. of white Dutch clover, 9lbs. of red clover, 1 peck of fine rye-grass, or 4lbs. of white Dutch, 4lbs. of trefoil, and 6lbs. of red clover, at the option of the tenant.” And then may follow, “the lands not to be broken up again before the Michaelmas seedness, after the expiration of two years from the time of laying down, except the seeds should fail; in which case, with the consent of the landlord, the land to be sown with beans in the spring previous to the time stipulated for breaking up, and afterwards sown with wheat; first being limed with 5 tons of good well-burnt lime to each acre so sown, and afterwards fallowed in the regular course above mentioned.”

<sup>f</sup> Or say, “not to sow more than half an acre of hemp or flax in any one year, nor sow any rape or cole for seed, nor to have more than one acre of clover for seed.”

<sup>g</sup> Here may be added, “being allowed liberty to thrash the last year’s crop, and to eat and consume the straw and fodder, until the day of, &c., after quitting; also the

*Tenant*—to be permitted to carry away tons of hay when he quits, without paying for the same.

As to the quantity of wheat or winter-corn.

*Tenant*—not to have more than        acres of wheat, or winter-corn, at the Michaelmas seedness previous to quitting, and that to be upon clover leys or fallow well and properly prepared, and manured as before mentioned; and to reap, bind, and set up the same, and house his customary share thereof, being, &c., in a barn or stack-yard upon the premises, with liberty to thrash out the same on or before the        day of        next ensuing the time of quitting, leaving the straw and chaff arising therefrom, for the benefit of the landlord, and        thraves of the same properly tied up.

To hay up the clover.

*Tenant*—to hay up the clover of the first year's growth on the 1st December, and the meadow-ground on the 2d February previous to the expiration of the term.

Incoming tenant to enter.

*Tenant*—to permit landlord, or the incoming tenant, in the last year, to enter upon the arable land as soon as the crops have been taken off, to plough and manure the same; and to have one convenient lodging-room, and the joint use of the kitchen, in the dwelling-house, for landlord's servants to lodge and diet in, without extinguishment of rent.

*Tenant*—if required, to plough any of the said lands, and to be paid for the same at the rate of 12s. per acre.

Landlord to plant.

*Tenant*—to permit landlord to plant in the hedges, and prevent the young trees from being destroyed by cattle.

Not to agist.

*Tenant*—not to take in any cattle or sheep to agist, under a penalty of 40s. for each beast, and 5s. for each sheep.

To preserve game.

*Tenant*—to preserve the game, and forewarn all

use of a piece of land for a boozy pasture, and a lodging-room in the house for a servant to reside in till that time, to be fixed upon by the landlord."

## CONDITIONS FOR THE LEASE OF A FARM. 427

persons from sporting, and permit actions to be brought in tenant's name against trespassers in any way whatever on the said premises, at landlord's expense.

*Tenant*—not to underlet or assign the said premises, or any part thereof. Not to underlet.

*Tenant*—to lay upon the premises, in each year, at least Manure. waggon-loads, (or say, "tons,") of good clod lime, to be made appear by proper vouchers, to the landlord's satisfaction.

*Tenant*—to perform To perform carriage for landlord. days carriage in every year for the use of the landlord, gratis, with a team of five horses, and two able men, for repairs or otherwise, as the landlord may require; and to deliver at, &c., on, &c., tons of good bolting straw, if required.

*Tenant*—to lay out in each year To expend in draining. per cent. on the said yearly rent, in draining, watering meadows, or other permanent improvements, to be verified by vouchers, to the satisfaction of landlord; but to be made subject to the approval of the landlord in all cases; and if any excess of expenditure happens in any one year, the excess to be carried to the credit of the ensuing year or years.<sup>a</sup>

<sup>a</sup> If let from year to year, the following may be added:

*Tenant*—in case of being turned off by the landlord within years, to be allowed the costs of any under-draining he may have done in an effectual manner, with stone or tile, under the direction of the landlord, or his agent, within the last year before the quitting, and of any lime laid on the said land, provided the quantity so laid on shall be at the rate and in the proportion before mentioned; also for any lime mixed with soil as a compost, and not laid upon the land, together with the costs and charges attending the mixing and preparing the same.

*Tenant*—to be paid for the clover of the last year's growth the worth of the seeds at the time of sowing, (if laid up and preserved.)

*Tenant*—to reside on the premises, under the penalty of L.50 for every month's absence without consent of landlord."

The following is the usual memorandum:—"The said

## OBSERVATIONS ON LEASES.

The importance of Leases, viewed as a branch of Conveyancing, is but little, yet few deeds require more care and attention in their preparation. To give forms applicable to the many provisions which may be required to meet the circumstances of the various cases which may occur, is more than can be expected in the largest treatise on the subject, and very far beyond the scope of this work; and even if it could be done, the draftsman must, after all, rely principally upon that care and thought which would enable him, if at all conversant with the language of conveyances, to give clear expression to the intention of the parties without that assistance.

As leases do not, generally speaking, form part of the title to property, it is not necessary or usual to insert any recitals in them, nor need the premises be so minutely described as in a conveyance. Any simple general description which will identify them is sufficient, and where the premises consist of many different pieces of land or houses, it will be found most convenient to describe them in a schedule, and not in the body of the lease.

Leases of land  
in mortgage.

Where the lands are in mortgage at the creation of the lease, it will be necessary, in order that the lessee may have a good title, that the concurrence of both the mortgagee and mortgagor should be obtained, even though the mortgagee should not have taken possession, for a lease by the mortgagor alone would be no defence to an ejectment brought by the mort-

A. B. agrees to let, and the said C. D. agrees to become tenant of the before-mentioned farm, lands, and premises, for the term and upon the conditions hereinbefore stated, (and to be contained in the lease and counterpart, to be forthwith prepared and executed by them, at the joint expense of the said A. B. and C. D.) As witness their hands,  
 's                      day of," &c.

gagee, who, notwithstanding such lease, might turn the tenant out of possession;<sup>1</sup> and, on the other hand, a mortgagor, upon redeeming, would be entitled to set aside any leases granted by the mortgagee without his concurrence.<sup>2</sup>

It should not be overlooked in the preparation of such leases, that the lessee's covenants, if entered into with the mortgagor, will not run with the land, they ought, therefore, to be entered into with the mortgagee, his heirs and assigns, or as the mortgagor would, on redemption and reconveyance of the premises, become the assignee of the mortgagee, he would in that character be able to sustain his action on the covenants.<sup>1</sup>

The mortgagee cannot, of course, be expected to enter into covenants with the lessee, who must, therefore, rest satisfied with the personal covenants of the mortgagor.

In leases prepared under powers, great care must be taken to comply with the terms upon which they are authorized to be granted, for without such compliance, a lease would be voidable by any person interested in the reversion who was not a party to it.

A lessee has at law as absolute a power of disposition over his estate, as the owner of any other interest in property, and, therefore, if it is wished to restrain him from assigning, a provision must be inserted in the lease for that purpose, which, if intended to apply to an underlease, must be made expressly

Restraint  
upon assign-  
ment.

<sup>1</sup> *Keech v. Hale*, Dougl. 21; *Thunder v. Belcher*, 1 East, 449.

<sup>2</sup> *Hungerford v. Clay*, 9 Mod. 1.

<sup>1</sup> *Webb v. Russell*, 3 T. R. 393; *Stokes v. Russell*, *ibid.* 678. The observations above were written with a view to the case of leases where the mortgage is in fee, for if the mortgage were for a term, as it would merge in the reversion on a reconveyance to the mortgagor, he could not be considered as the assignee of the mortgagee's estate.



to extend to that species of conveyance,<sup>m</sup> as an underlease is not considered as an assignment; and, on the other hand, an assignment is not considered a breach of the provision against underleasing.

These provisions are construed very strictly, inasmuch that the restraint against assignment has been held not to extend to assignments by operation of law, unless expressly extended to them;<sup>n</sup> and that if licence be once given, (even if but in a qualified way, as with reference to part of the land only,) the restraint is gone for ever.<sup>o</sup> In the same spirit it has been held that an assignment subsequently avoided by the bankruptcy of the lessee worked no forfeiture, and that if the lessee, by conveyance from the assignees under his own bankruptcy, became entitled to the lease, he might thenceforth hold the premises free from the restraint against assignment,<sup>p</sup> and it has also been held that a deposit, by way of mortgage, is not a breach of the provision against assignment.<sup>q</sup>

Equitable mortgages of leaseholds.

It may be useful to mention here, that the subject of equitable mortgages by deposit of a lease has recently been the subject of discussion. In a case in 3 Brown's Chancery Cases, 166, *Lucas v. Comerford*, it was decided that a deposit of a lease was compellable in a court of equity at the suit of the lessor to take an assignment of the lease, in order to give the landlord a remedy at law against him on the covenants. This doctrine was recognised by the Vice-Chancellor in 1835,<sup>r</sup> when he made a decision

<sup>m</sup> *Crusoe v. Bugley*, Blackst. 766; 3 Wills. 234; 15 Ves. 265; ante, p. 406.

<sup>n</sup> *Doe v. Carter*, 8 T. R. 57; *Goring v. Warner*, 7 Vin. Abr. 85, pl. 9; *Philpot v. Hoare*, Amb. 480; 2 Atk. 219.

<sup>o</sup> *Dumper's case*, 4 Co. 119; *Jones v. Jones*, 12 Ves. 186.

<sup>p</sup> *Doe v. Smith*, 5 Taunt. 795.

<sup>q</sup> *Doe v. Hogg*, 2 Car. and P., N. P. cases, 160; *Doe v. Bevan*, 3 M. and S. 353.

<sup>r</sup> *Flight v. Bentley*, 7 Sim. 149.

in conformity with it; but in a very recent case,\* he expressed considerable surprise at his former decision, and made a decree in direct opposition to it. Though, till further adjudication on the subject, the latter case must be considered as law, persons accepting the deposit of a lease as a security for a debt, will do well to see that the rent is regularly paid, lest it should turn out that all the security in the case was their becoming sureties to the landlord for his rent.

Upon the bankruptcy of a lessee, the lease is not divested out of him, unless the assignees elect to take it, and consequently his right to vote as a lessee under the 2d Will. IV., c. 45, would not be affected by the bankruptcy till the assignees have made their election; and the lessee, (if the assignees do not elect to take it,) continue liable to the rent accruing subsequent to the act of bankruptcy.†

Effect of  
lessee's bank-  
ruptcy.

It need scarcely be observed, that where a premium is paid for the granting a lease, it becomes liable, (certain particular cases excepted,) not only to the stamp, according to the amount of the rent, but also to an *ad valorem* duty on the premium, on the same scale as on the consideration for a purchase, in which light it is considered. Stamps.

There has been no direct decision upon the point, but it has always been considered, and I cannot believe that a decision will ever be made contrary to that opinion, that no additional stamp is chargeable in respect of the increased rent received for ploughing up pasture, &c.‡

Rents are in all cases apportionable where the right to receive them changes at any other time than one of the reserved days of payment, either by the death of a tenant for life, or the determination of the interest of any person during his own life; but the apportionment is affected differently in different cir-

Apportion-  
ment of rents.

\* *Moors v. Choat*, 8 Sim. 508.

† *Copeland v. Stevens*, 1 Barn. and A. 593.

‡ See Bythewood's *Conveyancing by Jarman*, tit. Leases.

cumstances. Thus, under the 15th section of 11th Geo. II., cap. 19, (explained by 4th Will. IV., cap. 22, sec. 1,) where the lease was determined by the death of the lessee, whether as being tenant for life, or having as tenant in tail,\* or donee of a power,\* created a lease, which, though in itself invalid from want of compliance with the requisitions which were necessary to give it validity, was good for the life of the grantor, the representatives of such lessor might recover a proportionate part of the accruing rent; and under the same sections, where the lease determined in the lifetime of the lessee, by the death of any life or lives for which he was holding, a proportional rent is recoverable by such lessor. But under the 2d section of 4th Will. IV., cap. 22, the apportionment is affected in a different way, for in order to free the tenant from any questions between the lessors, he is permitted to pay the whole rent to the heir, from whom the party entitled to the proportionate part may recover it. That act was passed on the 16th June 1834, and is, therefore, applicable only to rents reserved by leases granted after that period. It gives apportionment of rent to all persons whose interests are determined by their death, or any other event during the continuance of the leases, such lease having been granted by a tenant for life or in fee, or under any power, but it subjects such apportioned part to an equitable proportion of the changes affecting it.

Under these two acts it will be found, that in all circumstances where an express stipulation to the contrary has not been made, rent is put upon the same footing as interest, and that persons will be entitled to it during the whole time of the continuance of their estate as if it had accrued *de die in diem*.

\* *Whitfield v. Pindar*, 2 B. C. C. 662; 8 Ves. 311; Amb. 198; 1 Swanst. 356; 3 Taunt. 331.

\* *Clarkson v. E. of Scarborough*, 1 Swanst. 354; *Ex parte, Smith*, *ibid.* 337; *Symons v. Symons*, 6 Mad. 207.

## CHAPTER XXV.

### MORTGAGES.

#### MORTGAGE IN FEE.

THIS indenture, made, &c., between [*the mortgagor*] of the one part, and [*the mortgagee*] of the other part. [*Recite the instrument showing the mortgagor's title, and the contract for the loan.*] Now, this indenture witnesseth, that, in pursuance of the said recited agreement, and in consideration of the sum of L. of lawful money of Great Britain to the said , at or immediately before the execution of these presents by the said in hand well and truly paid, the receipt of which said sum the said doth hereby acknowledge, and of and from the same, and every part thereof, doth acquit, release, and discharge the said , his heirs, executors, administrators, and assigns, for ever, by these presents, he, the said , hath granted, bargained, sold, released, and confirmed, and by these presents doth, &c., unto the said , (in his actual possession, &c.,) and his heirs, all, &c., and the reversion, &c., and all the estate, &c.: To have and to hold the said , and all and singular other the premises hereby granted and released, or intended so to be, with their appurtenances, unto the said , his heirs and assigns, to the only proper use and behoof of the said , his heirs and assigns, for ever; subject, nevertheless, to the proviso or agreement for redemption and reconveyance hereinafter contained; (that is to say,) [*Add proviso for redemption, p.*

72; *covenants for payment of the money; for insurance, (if desired;)* and for title, p. 97; and proviso for quiet enjoyment till default, see p. 72. A power of sale, if desired, should be inserted after the covenant for payment, p. 55.] In witness, &c.

#### MORTGAGE OF COPYHOLDS.

This indenture, made, &c. [*Recite the mortgagor's title, and agreement for loan.*] Now, this indenture witnesseth, that, in consideration, &c., he, the said [*mortgagor,*] doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to the said [*mortgagee,*] his heirs, executors, administrators, and assigns, that he, the said [*mortgagor,*] and his heirs, and all and every other proper and necessary parties, shall and will, at the costs and charges of the said [*mortgagor,*] his heirs, executors, or administrators, at the next general or other court that shall or may be holden for the said manor of \_\_\_\_\_, well and effectually surrender, or cause and procure to be well and effectually surrendered, either in person or by attorney,<sup>\*</sup> into the hands of the lord or lords, lady or ladies, for the time being of the said manor, or otherwise convey and assure, according to the custom thereof, [*All, &c., as in the case of an absolute conveyance of copyholds; see p. 386.*] To the use, intent, and purpose that the said [*mortgagee,*] his heirs or assigns, shall and may be duly admitted tenant of the same messuages, lands, and premises, hereby covenanted to be surrendered, or intended so to be, with their appurtenances: To hold the same to him, the said [*mortgagee,*] his heirs and assigns, for ever, at the will of the lord, according to the custom of the said manor, subject only to the rents, suits, and services therefore due and of right accustomed, and subject also to the proviso or agreement for re-

<sup>\*</sup> If these words are not inserted, the mortgagee may object to a surrender by attorney, *ante*, p. 205.

demption next hereinafter contained, (*or*) [subject to a proviso or condition to be contained in the said surrender for making void the same on payment by the said [*mortgagor*,] his heirs, executors, administrators, or assigns, of the said sum of L.

with interest for the same after the rate of L.

for every L.100 per annum, at the time therein mentioned for payment thereof:] And it is hereby agreed and declared between and by the parties hereto, that he, the said [*mortgagor*,] his heirs and assigns, shall and will stand and be seised or possessed of the same messuages, lands, and premises in the meantime, and until the same shall be well and effectually surrendered, and the said [*mortgagee*,] his heirs or assigns, admitted thereto, in trust for the said [*mortgagee*,] his heirs, executors, administrators, or assigns, for securing to him and them the repayment of the said sum of L.

and interest, according to the true intent and meaning of these presents. [*Add proviso for redemption, power of sale, covenants for payment and for title, and proviso for enjoyment till default,* pp. 72, 97, 55.] In witness, &c.

#### A CONCISE MORTGAGE WITH TRUSTS FOR SALE.

This indenture, made, &c., between A.B., [*the mortgagor*,] of the one part, and C.D., [*the mortgagee*,] of the other part. [*Insert such recitals as are necessary to show the mortgagor's title, and recite the contract for loan, then convey the property to the mortgagee, as in other conveyances.* *Habendum*,] upon trust, nevertheless, that if the said A. B., his heirs, executors, administrators, or assigns, shall pay, or cause to be paid, unto the said C. D., his executors, administrators, or assigns, the sum of L. of lawful British money, with interest for the same after the rate, &c., on, &c., without any deduction or abatement whatsoever, then, and in such case, he, the said C. D., his or assigns, shall and will, at the

<sup>7</sup> This form is applicable to copyholds of inheritance, but may be easily adapted to all other copyholds.

Trusts for  
sale.

request, costs, and charges of the said A. B., his heirs, executors, administrators, or assigns, reconvey and re-assure the said hereditaments and premises unto him or them, or as he or they shall direct or appoint, free from all incumbrances to be created by the said C. D., his executors, administrators, or assigns, in the meantime ; but if default shall be made in payment of the said sum of L. and interest, or any part thereof respectively, at the time and in manner aforesaid, then upon trust that he, the said C. D., his heirs, executors, administrators, or assigns, shall and do, at any time thereafter, as he or they, in his or their discretion, shall think fit, without any further or other authority of the said A. B., his heirs, executors, administrators, or assigns, absolutely sell and dispose of the said messuages and other hereditaments and premises hereby or intended so to be, or any part thereof, either together or in parcels, and either by public auction or private contract, to any person or persons whomsoever, under and subject to such conditions of sale, or other conditions, stipulations, or agreements, as he or they shall, in his or their uncontrolled discretion, think proper ; with full power to buy in the said premises, or any part thereof, at any such auction, and afterwards to sell the same in any of the ways aforesaid ; and shall and do, on such sale or sales, make and execute all such deeds, assignments, conveyances, and assurances, as shall be deemed requisite and necessary to complete the same ; and also give and sign good and sufficient receipts and discharges for the moneys to be received by such sale or sales to the purchaser or purchasers of the said premises, or any part thereof, who, paying such money, and taking such receipt or receipts for the same, shall not afterwards be obliged to see to the application, or be answerable or accountable for the misapplication or non-application of the same, or any part thereof ; and upon further trust that the said C. D., his heirs, executors, administrators, or assigns, shall and do stand possessed of and interested in the moneys which shall arise by such sale or sales, In trust, in the

first place, to retain and pay himself and themselves thereout all such costs, charges, and expenses, as he or they shall or may bear, sustain, or be put unto, in or about the making and completing such sale or sales, or otherwise, in or about the execution of the trusts hereby in him or them reposed; and, in the next place, retain and satisfy to him and them the said sum of L. with all interest then due for the same, and all costs and expenses occasioned by the non-payment thereof; and shall and do pay the surplus (if any) of such moneys unto the said A. B., his heirs, executors, administrators, or assigns. [ *Add covenants for payment, and for title, or, if brevity is an object, only the covenants for quiet enjoyment and for further assurance, p. 97.* ] In witness, &c.

TRANSFER\* OF A MORTGAGE WHERE THE MORTGAGOR CONCURS, AND A FURTHER SUM IS ADVANCED.

This indenture, made, &c., between [*the mortgagee*] of the first part, [*the mortgagor*] of the second part, and [*the assignee*] of the third part. [*Recite the mortgage.*] And whereas the said principal sum of L. still remains due and owing upon the before in part recited securities, together with L. for arrears of interest thereon, [*or*] but all interest for the same hath been duly paid up to the day of

\* It is recommended in all cases of assignment of mortgages, to make the mortgagor (if possible) a party; for, although it is not absolutely necessary upon a simple transfer, where no further sum is advanced, yet it furnishes evidence of the mortgage-money remaining due. No further sum advanced by the assignee will carry interest, nor can any part of the interest be made principal, without the mortgagor becoming a party. (4 Ves. 118, 126, 128; 1 Vern. 168.)

When the mortgagor should be a party to an assignment.

In the mere transfer of a mortgage, where no further sum is advanced, the principal object is the assignment of the debt, which is a chose in action, and must be sued for in the assignor's name; therefore a power of attorney for that purpose must be inserted in such transfer. (See *Matthews v. Walwyn*, 1 Ves. 128; and *ante*, p. 286.)



the date hereof. And whereas the said [*mortgagee*] having called in, and required payment of the said sum of L.                      and interest, the said [*mortgagor*] being unable to discharge the same out of his own moneys, hath requested the said [*assignee*] to advance and lend him the sum of L.                      for such purpose, and to supply his other occasions, which he hath consented to do, upon having the repayment thereof secured to him, with interest for the same, in manner hereinafter mentioned : Now, this indenture witnesseth, that, in pursuance of the said recited agreement in this behalf, and in consideration of the sum of L.                      of, &c., by the said [*assignee*] to the said [*mortgagee*,] at the request, and by the direction of the said [*mortgagor*,] testified by his being a party to and executing these presents, at or immediately before the execution of these presents, in hand well and truly paid, the receipt of which said sum the said [*mortgagee*] doth hereby acknowledge, and doth declare and admit the same to be in full for the absolute discharge of all principal, interest, and other moneys due and owing to him the said [*mortgagee*] on the hereinbefore in part recited securities ; and of and from the same sum, and every part thereof, doth acquit, release, and discharge the said [*assignee*,] and also the said [*mortgagor*,] and each of them, and each of their heirs, executors, administrators, and assigns, for ever by these presents : And also in consideration of the sum of L.                      , residue of the said sum of L.                      by the said [*assignee*] to the said [*mortgagor*] in hand well and truly paid, the receipt of which said sum, and also the payment, in manner aforesaid, of the said sum of L.                      making together the said sum of L.                      , he, the said [*mortgagor*,] doth hereby acknowledge, and of and from the same sum, and every part thereof, doth acquit, release, and discharge the said [*assignee*,] his heirs, executors, administrators, and assigns, for ever by these presents ; he, the said [*mortgagee*,] at the request, and by the direction of the said [*mortgagor*,] testified as aforesaid, hath, &c., and he, the

said [*mortgagor*,] hath, &c. [*After conveying the property, add the covenants, provisoes, and powers applicable to primary mortgages, with a covenant by the mortgagee, that he has done no act to incumber.\**] In witness, &c.

ASSIGNMENT OF A MORTGAGE WHERE THE MORTGAGOR IS NOT A PARTY.

This indenture, made, &c., between, &c. [*Recite the mortgage deed.*] And whereas the said principal sum of L. is now due and owing to the said [*mortgagee*,] upon the before in part recited security, together with the sum of L. for arrears of interest thereon.<sup>b</sup> And whereas the said [*assignee*] hath, at the request of the said [*mortgagee*,] agreed to pay off and discharge to him, the said [*mortgagee*,] the said sum of L. , so due and owing to him, upon the

\* This form is preferable for its simplicity, but it is thought by some persons that if it is used, an *ad valorem* duty must be paid on the whole sum; and that to save that duty upon the sum already charged, the mortgagee must assign the debt, &c., as in an assignment where the mortgagor does not join; and the covenant of the mortgagor be confined to the further sum, as in the case of a further charge, which will be the character of the transaction between the mortgagor and assignee; but some writers contend, that even if both sums are amalgamated and secured by covenants, powers, and trusts applicable to the united sums, an *ad valorem* duty would only be payable on the additional sum secured; and the editor concurs in this opinion. See *Coventry on Stamps*, and *post*. p. 667.

<sup>b</sup> If the mortgagor joins, add, "as he, the said [*mortgagor*,] doth hereby acknowledge;" and where he does not join, immediate notice of the assignment should be given to him, as any payments made by him to the original mortgagee, without notice of the assignment, would be valid; *Norrish v. Marshall*, 5 *Mad.* 475; *Williams v. Sorrel*, 4 *Ves.* 389.

hereinbefore in part recited securities, and to take an assignment and transfer of the said debt or sum of L. , and the securities for the same, in manner hereinafter mentioned. Now, this indenture witnesseth, that, in consideration, &c., he, the said [*mortgagee*,] hath bargained, sold, and assigned, and, &c., unto the said [*assignee*,] his executors, administrators, and assigns, all that the said sum of L. so secured to the said [*mortgagee*] by the said in part recited indenture of as hereinbefore mentioned, together with the said sum of L. so due and owing for interest thereon, and all interest henceforth to become due for the same; and all the right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of him, the said [*mortgagee*,] in, to, or out of the principal and interest moneys and premises hereby assigned, or intended so to be, [together with full power and authority, in the name or names of the said [*mortgagee*,] his executors, or administrators, but at the proper costs and charges of the said [*assignee*,] his executors, administrators, or assigns, to commence, institute, and prosecute all such actions, suits, and other proceedings, whether at law, in equity, or otherwise, as may be necessary for the recovery, compelling payment, and receiving the said principal and interest moneys intended to be hereby assigned, or any part or parts thereof respectively; and to give, sign, and execute effectual releases, acquittances, and discharges for the same.] To have, hold, receive, and take the said principal and interest moneys, and all and singular other the premises hereby assigned, or intended so to be, and every part thereof, unto the said [*assignee*,] his executors, administrators, and assigns, for his and their own absolute use and benefit. [*Where a power of attorney is adopted, as is usual on large transactions, insert it here, and then omit*

*the part between brackets.]* And this indenture further witnesseth. [*Here add an assignment of the mortgaged premises, concluding the habendum as follows.*] But subject to such right, title, and equity of redemption, as the same messuages, &c., under and by virtue of the said in part recited indenture of mortgage of     are subject and liable to : <sup>d</sup> And the said [*mortgagee*] doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to the said [*assignee,*] by these presents, in manner following ; (that is to say,) that he, the said [*mortgagee,*] hath not received the aforesaid sum of L.     or any part thereof ; but that the same sum is still due and owing to him, on the said recited securities : And further, &c., [*add covenant that he has not incumbered, p. 89.*] In witness, &c.

CONVERSION OF A MORTGAGE FOR A TERM INTO A MORTGAGE IN FEE ON A TRANSFER, THE TERM BEING ASSIGNED TO ATTEND THE INHERITANCE.\*

This indenture, made, &c., between [*the mortgagor*] of the first part, [*the mortgagee*] of the second part, [*the assignee*] of the third part, and [*the trustee*] of the fourth part. [*Recite the mortgage, the amount due on it, and the agreement with the assignee.*] Now, this indenture witnesseth, that, in pursuance of the said recited agreement in this behalf, and in consideration of the sum of L.     by the

<sup>d</sup> This covenant is of importance where the mortgagor is not a party, as the assignee takes subject to the account existing between the mortgagor and mortgagee ; *Bradwell v. Catchpole*, 3 Swan. 79, n. ; *Chambers v. Goldwin*, 9 Ves. 264.

\* If the term is a modern one, and it should be thought advisable to merge it, this form may be easily adapted for that purpose ; the mortgagee joining in the conveyance of the fee, and the second witnessing part being omitted altogether.

said [assignee] paid to the said [mortgagee,] as hereinafter mentioned; and also in consideration of the sum of 10s. by the said [assignee] now paid to the said [mortgagor,] the receipt whereof is hereby acknowledged, he, the said [mortgagor,] hath granted, bargained, sold, released, and confirmed, and, &c., unto the said [assignee,] (in his actual possession, &c.,) and to his heirs and assigns, all, &c. [*The remainder of this witnessing part, including the proviso for redemption, power of sale, covenants for title, will be like other mortgages; then add,*] And this indenture further witnesseth, that, in consideration of the sum of L. by the said [assignee,] at the request and by the direction of the said [mortgagor,] testified, &c., to the said [mortgagee,] in hand, &c., the receipt, &c., and, &c., [*insert a nominal consideration paid by the trustee;*] he, the said [mortgagee,] at the request and by the direction of the said [mortgagor,] and upon the nomination of the said [assignee,] testified, &c., hath bargained, sold, assigned, transferred, and set over, and, &c., unto the said [trustee,] all and singular the said [messuages, lands, and premises,] comprised in, and demised by, the said hereinbefore in part recited indenture of mortgage of being the hereditaments hereinbefore described, and hereby granted and released, or intended so to be, with their several rights, members, and appurtenances; and all the estate, &c.: To have and to hold the said messuages, lands, and other the premises hereby assigned, or intended so to be, with their appurtenances, unto the said [trustee,] his executors, administrators, and assigns, for and during all the rest, residue, and remainder of the said term of years now to come and unexpired, and all other the estate, term, and interest of the said [mortgagee,] therein freed and absolutely discharged of and from the said sum of L. and interest, and all other the moneys secured by the said indenture of mortgage as hereinbefore mentioned; but nevertheless in trust for the said [as-

*signee,*] his executors, administrators, and assigns, for better and more effectually securing to him and them the said principal sum of L. , and interest and other moneys hereby secured, or intended so to be; and for that purpose to assign and dispose of the same term and premises, from time to time, as he or they shall direct or appoint, and subject thereto, In trust for the said [*mortgagor,*] his heirs, appointees, and assigns, and to wait upon and attend the reversion, freehold, and inheritance of the same premises. [*Add a covenant by mortgagee that he has done no act to incumber, 89.*] In witness, &c.

## MORTGAGE OF LEASEHOLDS FOR YEARS.

This indenture, made, &c., between [*the mort-* Parties.  
*gagor,*] of, &c., of the one part, and [*the mortgagee,*]  
 of, &c., of the other part. [*Recite the original lease,*  
*(see p. 33,) and recite the mesne assignments, (or*  
*say, "by divers," &c., as in p. 32, showing the ori-*  
*ginal lease and the last assignment; ) and recite the* Testatum.  
*contract for the loan, see p. 26.]* Now, this in-  
 denture witnesseth, that, in pursuance of the said  
 agreement, and in consideration, &c., he, the said  
 [*mortgagor,*] hath granted, bargained, sold, assigned,  
 transferred, and set over, and by these presents doth,  
 &c., unto the said [*mortgagee,*] his executors, admi-  
 nistrators, and assigns, all, &c., comprised in and  
 demised by the said recited indenture of, &c., and  
 assigned to the said [*mortgagor,*] as aforesaid, with  
 their and every of their appurtenances, and all the  
 estate, right, title, interest, term, and terms of years  
 yet to come and unexpired, property, claim, and de-  
 mand whatsoever of him, the said [*mortgagor,*] of,  
 in, or to the same, or any part or parcel thereof, both  
 at law and in equity. To have and to hold the said, Habendum.  
 &c., hereby assigned, or intended so to be, with their  
 appurtenances, unto the said [*mortgagee,*] his execu-  
 tors, administrators, and assigns, for and during all  
 the rest, residue, and remainder yet to come and un-

expired of the said term of, &c., and all other the estate, term, and interest of the said [*mortgagor*,] of and in the same ; subject nevertheless to the payment of the rent thereby reserved, and the performance of the covenants and agreements therein contained, (which, from the 25th day of March last past, are or ought to be paid, performed, fulfilled, and kept, for and in respect of the said premises;) and subject also to the proviso or condition for redemption hereinafter contained ; (that is to say,) provided, &c. [*Add a proviso for redemption, p. 72, and covenants by the mortgagor for payment of the mortgage-money and interest, p. 97, that the lease is valid, as in p. 94, (commencing with the words, "That the said hereinbefore recited lease," &c., without the preliminary qualification, which is always omitted in mortgages,) and other covenants for title, p. 95.*] And further, that he, the said [*mortgagor*,] his heirs, executors, or administrators, shall and will, from time to time, so long as any principal, interest, or other moneys shall remain due on the security intended to be hereby made, pay, perform, and keep the rents, covenants, and agreements, in and by the said in part recited indenture of lease reserved and contained, on the lessee's or assignee's part to become due and payable, and to be performed and kept, for or in respect of the said leasehold premises, or any part thereof. [*If required, add covenant for keeping the premises insured, see form, p. 98, which, if the insurance has not been actually effected, will require to be varied in the commencement, for which, see p. 108 ; and add proviso for mortgagor to enjoy till default.*] In witness, &c.

Proviso for  
redemption.

Covenants.

#### ! FURTHER CHARGE.

Parties.]

This indenture, made, &c., between [*the mort-*

When by in-  
dorsement

The further charge is frequently made by indorsement ; for which purpose this precedent may be easily altered.

*gagor*] of the one part, and [*the mortgagee*] of the other part. [*Recite the mortgage, that the mortgage-money is still due, and agreement for further loan.*]

Recital.

Now, this indenture witnesseth, that, in consideration, &c., he, the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth covenant, grant, declare, and agree with and to the said [*mortgagee*], his executors, administrators, and assigns, in manner following; (that is to say,) that all and singular the said messuage, &c., described in the said recited indenture of mortgage, with their appurtenances, shall stand and be chargeable with, and continue and be a security unto him, the said [*mortgagee*], his executors, administrators, and assigns, not only for the payment of the said sum of L.

Testatum.

Charge.

and interest respectively secured by the said recited indenture, as aforesaid, but also for the payment of the said sum of L. now [or since] advanced by him as aforesaid, with interest for the same after the rate of L. per cent. per annum, until paid.

And that the said messuage, &c., shall not be redeemed, or redeemable, either at law or in equity, until as well the said sum of L. and interest, as also the said sum of L. and interest,

together with all costs, charges, damages, and expenses, occasioned by or in relation thereto, shall be fully paid and satisfied unto the said [*mortgagee*], his executors, administrators, and assigns, according to the true intent and meaning of these presents.<sup>a</sup>

[*Add covenants from mortgagor for payment of the further sum and interest, p. 97,<sup>b</sup> and short covenants*]

Covenants.

<sup>a</sup> On a day named, or "upon lawful demand made to him or them by the said (*mortgagee*), his executors, administrators, or assigns, for that purpose."

Covenant.

<sup>b</sup> If there be a power of sale in the mortgage, add, "And further, that the said premises, and every of them, shall be, and they are hereby made subject and liable to the same, or the like power of sale, and other powers and remedies, for payment of the said sum of L. , as the same premises are by the said recited indenture of, &c., subject or liable to,

When a power of sale.



*that he hath not incumbered;*<sup>1</sup> *and for further assurance, see pp. 89 and 100.]* In witness, &c.<sup>1</sup>

**MORTGAGE BY A TENANT IN TAIL, WITH THE CONSENT OF THE PROTECTOR.<sup>1</sup>**

**Parties.** This indenture, made, &c., between A. B., of, &c., (eldest son and heir of the body of C. B., of, &c., Esq.,) of the first part; the said C. D., of, &c., [*the protector,*] of the second part; and [*the mortgagee,*] of, &c., of the third part. Whereas, [*Recite the instrument creating the entail; and recite the contract for the*

**Recital.**

in default of payment of the before-mentioned sum of L. ; and in case of such sale or sales, the moneys to arise thereby shall be chargeable with, and be applicable and applied as well in payment of the said sum of L. as of the before-mentioned sum of L. , and interest thereon."

**Covenant against Incumbrances.**

<sup>1</sup> This covenant may begin thus: "And also that he, the said [*mortgagor,*] hath not parted with, or otherwise disposed of, his equity of redemption, or right to redeem the premises comprised in the said recited indenture of mortgage, nor at any time heretofore since the execution of the same indenture, made, done, &c., any act," &c., to incumber.

**The form of a further charge.**

<sup>2</sup> The mortgagee having the estate already vested in him, no further conveyance is necessary, it being only requisite to recite the security; and then, after stating that the money remains due, and acknowledging the receipt of the further sum advanced, the mortgagor should covenant that the mortgaged premises shall be a security as well for the sum already secured as for the further advance; and add a declaration by him that the premises shall *not* be redeemed or redeemable until the two several sums are paid; with a covenant for payment of the further sum, and with covenants that the mortgagor hath done no act (*since the execution of the mortgage*) to incumber; and to further assure the premises. (See p. 100.)

<sup>1</sup> If the mortgagor be tenant in tail *in possession*, recite the deed, or will, creating the estate tail, the contract for the loan, and omit the recital as to the protector's consent.

*loan.*] "[And whereas the said C. D., in order to enable the said A. B. to make an effectual security for the said sum of, &c., and interest, as against all persons claiming in remainder or reversion expectant on the estate tail of the said A. B., of and in the lands and hereditaments hereinafter described, and intended to be hereby granted and released, hath agreed to join in these presents, for the purpose of testifying his consent to the conveyance, and disposition intended to be hereby made.] Now, this indenture witnesseth, that, in pursuance and performance of the said recited agreement, and in consideration of the sum of, &c., the receipt, &c., he, the said A. B., [with the consent and approbation of the said C. B., as such protector as aforesaid, testified by his being a party to, and executing these presents,] hath granted, bargained, sold,<sup>a</sup> disposed of, and confirmed, and by these presents intended to be forthwith enrolled in her Majesty's High Court of Chancery, doth, &c., unto the said [*mortgagee*,] and his heirs, all that the remainder of him, the said A. B., expectant on the decease of the said C. B., of and in all, &c., together with all houses, &c., and the reversion, &c., and all the estate, &c., to have and to hold the said remainder lands, &c., subject [and without prejudice]

Recital of  
protector's  
consent.

Testatum.

The testatum will be as in the above precedent, varied to suit an estate in possession, with the usual proviso and covenants.

<sup>a</sup> If the consent of the protector has been obtained by a separate instrument, recite such deed; and omit the above recital, and the other parts within brackets. (For the definition of the protector, see 3 and 4 Will. IV., c. 74, s. 22, *ante*; and for his powers, s. 34 of the same act; and see Observations on the Protectorate, *post*. p. 591.)

<sup>b</sup> The conveyance by way of mortgage is taken by bargain and sale, as the deed *must* be enrolled, and therefore the expense of the lease for the year is saved. [The enrolment must be in Chancery within six calendar months after its execution, 3 and 4 Will. IV., c. 74, s. 41: see *ante*, p. 365 and 158.]

to the rights of the said C. D., to exercise all or any of the powers and authorities now vested in him, in respect of his said estate for life, of and in the hereinafore mentioned hereditaments and premises, or otherwise howsoever, unto and to the use of the said [*mortgagee*,] his heirs and assigns for ever, freed and absolutely discharged from the estate tail of the said A. B., and all other estates tail, remainders, reversions, limitations, and conditions, thereupon expectant or depending; but subject, nevertheless, to the proviso or agreement for redemption of the said remainder hereditaments and premises hereinafter contained; (that is to say,) [*Add proviso for redemption, p. 72; covenant for payment, p. 97; powers of sale, p. 55; covenants for title, p. 98; and proviso for enjoyment till default, p. 72.*] "In witness, &c.

**MORTGAGE BY TRUSTEES OF A TERM, WITH THE  
CONCURRENCE OF THE TENANT FOR LIFE.**

This indenture, made, &c., between, &c., [*trustees*,] of the first part, C. D., [*tenant for life*,] of the second part, and E. F., [*mortgagee*,] of the third part, [*Recite the settlement or will, and the contract for loan, p. 26.*] And whereas the said C. D. hath, for further securing the repayment of the said sum of L. and interest, consented to concur in these presents, for the purpose and in manner hereafter mentioned. Now, this indenture witnesseth, that, in consideration, &c. [*State the receipt of the mortgage-money by the*

\* In order to avoid any question as to the right to the equity of redemption, and to supersede the necessity of enrolling the mortgage-deed, the tenant in tail may execute the necessary assurance for barring the entail, and limiting the estates required, by a deed to be executed and enrolled according to the act; and then execute the mortgage-deed in the usual way.

*trustees, and a nominal consideration by C. D.]*

They, the said [*trustees,*] at the request, and with the privity and approbation of the said C. D., testified, &c., have, and each of them hath bargained, sold, assigned, transferred, and set over, and, &c., and the said C. D. hath granted, bargained, sold, assigned, and confirmed, and, &c., unto the said E. F., his executors, administrators, and assigns, all, &c., (*see p. 40.*)

*Habendum* unto the said [*mortgagee,*] his executors, administrators, and assigns, from henceforth, for and during all the rest and remainder now to come and unexpired of the said term of five hundred years therein, without impeachment of waste; yielding and paying therefore yearly, and every year during the said term, the rent of a peppercorn, (if demanded.) Provided always, &c., that if the said C. D., his heirs, executors, administrators, or assigns, or any other person or persons who shall or may be seised of or entitled to the said hereditaments and premises, contained in the said in part recited indenture of settlement, or any of them, do and shall well and truly pay, &c., [*as in p. 72,*] then and from thenceforth this present indenture, and the grant, demise, and assignment hereby made, and every clause and sentence herein contained, shall cease, determine, and be absolutely void, any thing, &c., to the contrary, &c. [*Add a covenant from the trustees that they have done no act to incumber, p. 89; and covenants by the tenant for life for payment, p. 97, and for title, p. 100; and proviso for enjoyment till default, p. 72.*] In witness, &c.

Premises.  
Habendum.

Proviso for  
redemption.

Covenant.

#### MORTGAGE BY THE EXERCISE OF A POWER OF APPOINTMENT.

This indenture, made, &c., between [*the mortga-* Parties.  
*gor*] of the one part, and [*mortgagee*] of the other part. [*Recite the deed creating the power, (setting forth the words of the power fully,) and the agree-*

Testatum.

Covenants  
that the  
power was  
well created,  
and is now  
in force.

And hath full  
power to limit  
and appoint.

And to enter  
in default of  
payment, &c.

*ment for the loan, p. 26.]* Now, this indenture witnesseth, that, &c., [*here add the appointment, which will be similar to appointments in an absolute conveyance, see p. 356 ;*"] subject nevertheless to the proviso for the redemption of the said hereditaments hereinafter contained ; (that is to say,) [*Add a proviso for redemption, as in p. 72 ; covenant for payment, p. 97 ; and common mortgage-covenants, as in p. 98 ; or after the following concise form :*] And the said A. B., for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said [*mortgagee,*] his heirs and assigns, in manner following ; (that is to say,) that the said power of appointment given or reserved to him, the said [*mortgagor,*] by the said recited indenture of release, of, &c., was well and effectually created ; and that the same is now in full force, and in no wise suspended, extinguished, or impeached.<sup>a</sup> And that he, the said [*mortgagor,*] hath full power to limit and appoint the said hereditaments and premises to the use of the said [*mortgagee,*] his heirs and assigns, [*and if in trust for sale, say,* "upon the trusts and in manner aforesaid ;"] and it shall and may be lawful for the said [*mortgagee,*] his heirs or assigns, at all times after default shall have been made by the said [*mortgagor,*] his heirs, executors, administrators, or assigns, in

<sup>a</sup> If the deed creating the power is recited, and the power fully set forth in such recital, it will be sufficient to state in the operative part, that the mortgagor "doth by these presents direct, limit, and appoint," if such are the words of the power ; but if the deed and power be not so recited, the power must be referred to, as in p. 356.

<sup>b</sup> Here may be added, "And that by the exercise hereby made of the said power, the said hereditaments and premises mentioned, and intended to be hereby limited and appointed, will be well and effectually conveyed and assured to the use of the said [*mortgagee,*] his heirs and assigns, subject to the proviso hereinbefore contained for redemption of the said hereditaments and premises."

payment of the said sum of L. and interest, or any part thereof respectively, contrary to the true intent and meaning of these presents, peaceably and quietly to possess and enjoy the said premises, and to receive the rents, issues, and profits thereof, without any interruption or disturbance from him, the said [*mortgagor*,] or his heirs, or from any person or persons whomsoever; and that absolutely discharged or otherwise by the said [*mortgagor*,] his heirs, executors, or administrators, indemnified, from all conveyances, charges, and incumbrances whatsoever. And further, that he, the said [*mortgagor*,] and his heirs, and all persons whatsoever lawfully and equitably claiming, or to claim, any estate or interest in the said hereditaments or premises, or any part thereof, shall and will, upon the request of the said [*mortgagee*,] his heirs or assigns, but at the costs and charges of the said [*mortgagor*,] his heirs, executors, administrators, or assigns, execute all such further assurances as may be required by him, the said [*mortgagee*,] his heirs or assigns, for limiting, appointing, or conveying the said premises to the use of the said [*mortgagee*,] his heirs and assigns, in manner aforesaid. Provided always, that it shall be lawful for the said [*mortgagor*,] his heirs or assigns, to enjoy the said premises without the disturbance of the said [*mortgagee*,] his heirs or assigns, until default shall be made in payment of the said sum of, &c., or the interest thereof, or any part thereof respectively. In witness, &c.

Free from incumbrances.

Further assurance.

Proviso for mortgagor to enjoy until default.

A SHORT FORM OF A MORTGAGE, WITH TRUSTS FOR SALE, WHERE THE MONEY IS ADVANCED FOR A LIMITED TIME BY TWO PERSONS.

This indenture, made, &c., between A. B., [*mortgagor*,] of the first part, C. D. and E. F., [*mortgagees*,] of the second part, and G. H., [*trustee*,] of the third part. [*Recite the mortgagor's title, and the contract for the loan, to be secured by a convey-*

Parties.

Testatum.

*ance in trust to sell.*] Now, this indenture witnesseth, that, in pursuance of the aforesaid agreement, and in consideration of, &c. [*Here convey the property according as it may be freehold, copyhold, or leasehold.*]

Upon trust to permit the mortgagor to receive the rents until the time appointed for payment of the money lent.

*Habendum* upon trust, that he, the said [trustee,] his [heirs] and assigns, do and shall permit the said [mortgagor,] his [heirs] and assigns, to receive the rents and profits of the said premises until the       day of       and in case the said [mortgagor,] his heirs, executors, or administrators, shall and do on such       day of       pay unto the said [mortgagees,] their executors, administrators, or assigns, the aforesaid sum of L.       with interest

Upon default, to enter upon and sell.

thereon, after the rate, &c., then upon trust to reconvey and reassure the aforesaid       and premises unto the said [mortgagor,] his [heirs] and assigns, or as he or they shall direct; but in case default shall be made in payment of the principal and interest moneys hereby secured, then, and immediately after such default, upon trust, that he, the said [trustee,] his heirs, executors, administrators, and assigns, do and shall enter upon, receive, and take the rents and profits of the said hereditaments and premises; and as soon after as conveniently may be, sell and dispose of the same, or any part or parts thereof, either by public auction or private contract, or both of such ways, for the best price or prices that can be obtained; and convey the same hereditaments and premises, when sold, to the purchaser or purchasers thereof, or as he or they shall direct. And it is hereby declared, that the said [trustee,] his heirs, executors, administrators, and assigns, shall stand possessed of the money arising from such sale, and of the rents and profits of the said premises in the

Trusts of the money.

\* If the consideration is stated as paid conjointly, one stamp only will be payable upon the gross amount; but if the mortgagees are treated as tenants in common of the money by stating it to be paid in equal or other proportions, then an *ad valorem* duty will be payable upon each sum.

meantime, upon trust, after payment of all expenses attending the said sale, and the performance of the trusts herein contained ; [to pay unto the said C. D., his executors, administrators, or assigns, the sum of L. , with all interest which shall be then due for the same. And also to pay to the said E. F., his executors, administrators, and assigns, the sum of, &c., with, &c.,] (or) [unto the said C. D. and E. F., their executors, administrators, and assigns, the said sum of L. , and all arrears of interest, and other sums of money, if any due and owing to them upon or by virtue of these presents,] and after full payment and satisfaction of the said principal, interest, and other moneys upon trust, that he, the said [*trustee,*] his heirs, executors, administrators, or assigns, shall and do pay the residue (if any) of the moneys to arise by such sale unto the said [*mort-* rusts of pre-  
*gagor,*] his executors, administrators, or assigns, mises after  
and, if any part or parts of the said payment of  
premises, shall then remain unsold, reconvey and re- the money.  
assure the same unto the said [*mortgagor,*] his [heirs]  
or assigns, or as he or they shall direct or appoint.  
And it is hereby declared, that the purchaser or Purchasers  
purchasers of the said hereditaments and premises not bound to  
shall not be obliged to see to the application of his, see to the ap-  
her, or their purchase-money, after paying the same plication of  
to the said [*trustee,*] his executors, administrators, purchase-  
or assigns, and taking his, her, or their receipt for money.  
the same ; which receipt shall be a good discharge  
for all money therein expressed to be received.  
[*Add covenant for payment of the mortgage-money,*  
*p. 97, for quiet enjoyment, and for further assurance,*  
*p. 101.]* Provided, lastly, and it is hereby declared, Proviso in  
that in case the said [*trustee,*] his heirs or assigns, case of trustee  
shall decline, refuse, or become incapable to act in declining, &c.  
the trusts aforesaid, it shall and may be lawful for  
the said [*mortgagees,*] their executors, administrators,  
or assigns, to appoint another trustee in his or their  
place, to whom the said trust property and premises  
shall, with all convenient speed, be conveyed ; and



Trustee's indemnity clause.

such new trustee shall have, and may exercise, the same powers as well before as after such conveyance, in the same manner as if his name had been inserted in these presents, and that neither the said nor any future trustee shall be answerable for any loss that may befall the said premises, unless the same shall happen by or through his or their wilful default. In witness, &c.

#### SHORT MORTGAGE OF PERSONALTY.

Parties.

This indenture, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. [*Recite the loan or the amount due and owing.*]

Testatum.

Now, this indenture witnesseth, that, in consideration of, &c., he, the said A. B., hath granted, bargained, sold, assigned, transferred, and set over, and by these presents doth, &c., unto the said C. D., his executors, &c., all, &c. To have and to hold all and singular the said, &c., unto the said C. D., his executors, administrators, and assigns for ever. Provided always, and it is hereby agreed and declared, that if the said C. D., his executors, administrators, or assigns, or any of them, do or shall well and truly pay, or cause to be paid, unto the said A. B., his executors, administrators, or assigns, the sum of L. , of lawful, &c., with interest for the same, after the rate, &c., then these presents, and every clause, article, condition, and thing herein contained, shall cease and

Habendum.

• Here may be added, "In trust at any time hereafter to enter upon the said premises, to make sale of the same goods, &c., by public auction or private contract, and out of the produce thereof, after paying the expenses of the sale and other charges, to pay or retain the said sum of, &c., so lent and advanced as aforesaid, (*or so due and owing as aforesaid.*) with all interest that may be then due thereon; and after satisfaction thereof, in trust to pay the residue of such moneys unto the said A. B., his executors, administrators, and assigns."

be void, anything, &c. [*Covenant by mortgagor for payment of the money, see p. 97.*] In witness, &c.

FURTHER CHARGE BY APPOINTMENT.

This indenture, made, &c., between A. B. of the one part, and C. D. of the other part. [*Recite the mortgage.*] And whereas there is now due and owing unto the said C. D., on the said recited security, the principal sum of L.100 only, (all interest for the same having been paid and discharged up to the day of the date hereof;) and whereas the said A. B., having occasion for the further sum of L.50, hath applied to and prevailed upon the said C. D. to advance and lend him the same on such security by way of further charge, as hereinafter contained. Now, this indenture witnesseth, that, in consideration, &c., the receipt, &c., he, the said A. B., for himself, his heirs, &c., doth covenant, &c., to and with the said C. D., his executors, &c., and also direct, limit, and appoint, that all and singular the said messuages, &c., and every part thereof, with their appurtenances, shall from time to time, and at all times hereafter during the remainder of the said term of five hundred years, stand, remain, and continue charged and chargeable with, and be a security unto the said C. D., his executors, &c., for the payment as well of the said sum of L.50 now advanced and lent, as of the said sum of L.100 before lent and advanced, making together the sum of L.150, with interest on the said several sums after the aforesaid rate of ; and that the said messuages, &c., or any part thereof, shall not be redeemed or redeemable, until full payment and satisfaction shall be made unto the said C. D., his executors, &c., as well of the said sum of L.50 now advanced, and the interest thereof, as of the said sum of L.100, and the interest thereof; anything in the said in part recited indenture contained to the contrary notwithstanding. [*Covenant for*

Parties.

Recital of money owing.

Application for a further sum.

Operative part.

Covenant.

*payment of principal and interest, p. 97.] In witness, &c.*

\* OBSERVATIONS ON MORTGAGES.

The duties of the solicitor<sup>t</sup> of a party about to lend money on mortgage are, in many respects, the same as those which devolve upon him when acting on behalf of a purchaser, and the observations which have been made with reference to the investigation of the title and protection against dower, and other incumbrances, on the investment of money, in the purchase of land, apply with more or less force to investments by way of mortgage only. But where the security is ample, and there is no reason to anticipate the necessity of resorting to a sale as a means of obtaining repayment of the money advanced, a mortgagee would scarcely be justified in insisting upon as rigid an investigation of the title as would be proper and necessary on a purchase; for, by so doing, the difficulties which drive a person to borrow money would be considerably increased by great expenses, for which the party lending would obtain no adequate return.

Where an estate is of a value which puts the adequacy of the security beyond all doubt, and, from the circumstances of the case, (as where the property has been some years in a family,) there is no reason to doubt the goodness of the title, a very moderate degree of investigation only will be necessary. The dangers to be guarded against in accepting the title of property which has been for any length of years in one family are not, generally speaking, those aris-

<sup>t</sup> The preparation of the securities in all mortgage transactions is the duty of the solicitor of the mortgagee; *Kennedy v. Green*, 3 M. and K. 699. See also *Painter v. Linsell*, 9 L. J. 151, C. P. N. S.

ing from the adverse claims of strangers, but from some member of the family claiming under a will or settlement which may have been suppressed or forgotten, and under which the estate of the apparent owner in fee may be only that of tenant for life or in tail. To guard against claims arising from this source, a statement of intestacy and heirship should never be relied upon without the production of letters of administration, or a search in both the prerogative and district ecclesiastical court, to ascertain whether any will is in existence.

When it appears that the party had any vested interest in the property at the time of his marriage, whether in possession or reversion, and rests his title upon the statement that no settlement was then made, a statutory declaration of that fact should be obtained from the parties, and where it is stated that a settlement was made, but that the property in question was not included in it, that fact should be ascertained by the production of the settlement itself.

Where the property is of much greater value than the sum proposed to be lent upon it, and not subject to any incumbrances, a mortgage for a term of years may with propriety be taken, and then the estate in the premises and the right to the money will, upon the mortgagee's death, devolve upon the same person, and prevent any inconvenience arising from the heir of the mortgagee being an infant at the time of the redemption of the premises; but where, from the value of the property, or other circumstances of the case, it is considered advisable that the mortgagee should have the power of obtaining repayment by a sale of the property, the mortgage should be in fee with a full power of sale, which should authorize the mortgagee to sell without the concurrence of the mortgagor, to give valid receipts for the purchase-money, to pay off any prior incumbrances, or sell subject to them; and though, for the mortgagor's protection, there should be a provision for giving him a reasonable notice (as for three or six months) previous to

such sale, the purchaser should be relieved from the necessity of making any inquiries as to the fact of the notice having been given and exempted from responsibility, in consequence of any negligence in giving such notice.

Where the money belongs to two or more persons jointly, as in the case of trustees, it should be stipulated that the survivor will be entitled to the entire amount, and that his receipts will alone be necessary.\*

As a mortgagee, when he sells the mortgaged property under the power of sale, will be bound to make out his own title, as in the case of vendors selling their own property, he would, in cases where a sale may be reasonably anticipated, be justified in insisting upon the title being investigated and verified with nearly as much care and particularity as in the case of a purchase.

Mortgage-deed.

Covenants.

The form of a mortgage-deed, so far as it operates as a conveyance, does not vary from a conveyance on a purchase. The great difference between the deeds is the covenant for payment of the amount intended to be secured, and the proviso for redemption on such payment. The same covenants for title are alike applicable to both modes of conveyance, those in the mortgage not being qualified as those in an absolute conveyance. In the former, the conveying party covenants that he is absolutely seised of or entitled to the property, and that he has good right to convey it, but in the latter those covenants are qualified, the party covenanting only, that notwithstanding any act of his own, or of some ancestor, or other particular person named, he is seised, and has good right to convey; or, in other words, that neither he or such other person have by any act disqualified him from conveying the interests professed to be conveyed; and in the concluding covenant in a mortgage-deed the costs of any further assurance of the premises

\* The propriety of this course will appear by reference to the case of *Vickers v. Cowell*, 1 Beav. 529.

\* *Cripps v. Reade*, 6 T. R. 606.

is thrown upon the mortgagor, and not, as in purchase-deeds, on the person requiring it. The other clauses peculiar to mortgages, as the power of sale, &c., have been already referred to.

Where several persons concur in making up a sum about to be lent on mortgage, and it is wished to avoid the expense of several mortgage-deeds, or of the increased *ad valorem* duty which would be payable where the money is made repayable to the different parties in the proportions in which each advanced it, and not to them all jointly, the premises may be conveyed to all the mortgagees as joint-tenants, or may be vested in a trustee named by them all, or, if so agreed upon, in one of their own number, and such person should give to each party a declaration of trust as to his interest in the mortgage-money and premises, and if there should be any terms of years in the property, they may be assigned to those mortgagees in whom the fee is not intended to be vested, in order to give them some additional security by making their concurrence necessary in any future dealing with the property.

Mr Jarman, in his notes to Bythewood's Conveyancing, makes the following suggestions with reference to, the mortgage of copyholds, which are well worthy of attention: "In preparing mortgages of copyholds," says that writer, "it is usual for the mortgagor to enter into a covenant with the mortgagee to surrender them, which is followed by an actual conditional surrender of the copyhold lands to the mortgagee, and simultaneously enter into a deed of covenant for the payment of the money, and for the title, further assurance, &c., and the latter seems to be the more eligible plan, as it leaves nothing to be done to render the mortgagee's title complete, except admission, which is his own act. The accompanying deed also frequently contains a power of sale."

A mortgagee of leasehold property should not only ascertain at the time of the loan that the rent has

been paid, and that the covenants in the lease, especially those for the insurance and repair of the premises, have been performed, but should, from time to time, during the continuance of the loan, satisfy himself upon these points, and should (in case of the mortgagor's neglecting to do so) take the proper steps for the preservation of the premises, and preventing the lease from becoming forfeited to the lessor, and he will be entitled to a lien on the mortgaged premises for the amount so expended with interest;\* but in order to prevent the mortgagee from becoming liable to the rents and covenants of a lease as assignee thereof, it is the usual practice to effect a mortgage of leaseholds by means of an underlease, leaving a merely nominal reversion of a day or two in the mortgagor.

Title-deeds  
and notice.

A mortgagee should never allow the title-deeds to be retained by the mortgagor, but where they are in the hands of a prior mortgagee, or other incumbrancer, immediate notice of the loan should be given to such person, from whom inquiries should also be made as to the amount due to him on his security. The advantage of giving such notice must be apparent, when it is considered that a first mortgagee will be entitled to a prior lien for any further sums lent by him to the mortgagor, even after the creation of the second incumbrance, if he had no notice of it at the time of making the advance.

Should the mortgage be of an equitable interest only, and the title-deeds be in the hands of trustees, who would not be justified in giving them up to the mortgagee, a notice of the charge should be given to such trustees; and, in short, it may be laid down as a general rule, which ought rarely to be departed from, that where the mortgagee is unable to procure both a conveyance of the legal estate and the possession of the title-deeds, notice of his incumbrance should be given to the trustee or other party in

\* *Hardy v. Reeves*, 4 Ves. 466.

whom the legal estate is vested, and also to every person interested in any prior incumbrance.

If the mortgage-money is not repaid at the time mentioned in the proviso for redemption, the mortgagee is entitled to six calendar months' notice of the mortgagor's intention of repaying it,\* and he cannot be compelled to receive it at any time before the expiration of that period, unless (as by having taken any steps to obtain payment) he has precluded himself from objecting to the want of notice; but though it has been sometimes thought that a mortgagor is entitled to six months' notice of the mortgagee's intention to call in the money, it is apprehended that whenever the point is submitted to judicial decision, it will be found to be without foundation.<sup>†</sup>

As the mortgagee is entitled to six months' notice of intention to pay off the mortgage-money, to afford him time to obtain another security on which to invest his money, in order that he may not be a loser by its being unproductive, he is sometimes induced to take it in on a less notice, or without any notice, upon being paid interest for such period in advance as there was deficiency in the notice. The propriety of accepting such interest has been much questioned, and it has been suggested, that such a transaction would be usurious. The editor does not feel this objection in the force with which it is urged by some writers on the subject, but cannot, in the absence of authority, venture to say that it is unfounded; but however this may be, there can be no doubt that, if the money should be invested at any time before the expiration of the period for which interest has been paid, it would be the duty of the mortgagee to return all interest paid to him for the time subsequent to the day of investment.

As the mortgagee, if he should insist on his strict rights, will be entitled to a fresh notice if the money be not paid on the day mentioned in the notice,

\* *Sharpnell v. Blake*, 2 Eq. Ca. Ab. 603; *Gyles v. Hall*, 2 P. W. 378; *Garforth v. Bradley*, 2 Vez. 678.

† *Coote on Mortgages*, 553.



the mortgagor should tender it to him on the very day; and if the mortgagee were then to refuse it, he would not be entitled to any subsequent interest, unless his refusal was justified by the mortgagor having accompanied the tender with some improper requisitions, as for the execution of a reconveyance which the mortgagee had no opportunity of previously perusing,<sup>7</sup> or which contained unusual provisions.

Reconvey-  
ance.

The propriety of obtaining a reconveyance of the premises on the mortgage being paid off, cannot be too strongly insisted upon. The expense occasioned on a subsequent sale of the property, by neglecting to do so, is often so considerable, that, independent of the inconvenience of leaving the legal estate outstanding, it ought to prevent persons from allowing the desire of saving a small and present expense to lead them to incur the risk of a greater expense at some future time. (See *Poole v. Pass*, 1 Beav. 600.)

Entering into  
receipt of  
rents.

If the interest is not regularly paid, a mortgagee should give notice to the tenants to pay their rent to him, after which he would be entitled to receive as well the rent then due, but not paid, as that which may become due after the notice, and any payment by the tenant to the mortgagor, after such notice, will not deprive the mortgagee of his right to recover it from such tenant.

Foreclosure.

If the mortgagor, upon a bill of foreclosure being filed against him, is desirous of retaining the property, and paying off the mortgage-money, he should not go to the expense of putting in an answer; but (if he is willing to admit the title of plaintiff) he may at once move for the usual decree of reference to the master to take an account of the amount due, under which he may obtain the same indulgences as to time, which he might have obtained under a decree made upon the hearing of the cause, the loss of time between such hearing and the motion being well compensated by the saving of expense.

I cannot find any case upon the point, but I fear that by the terms of the act of Parliament,<sup>7</sup> which

<sup>7</sup> *Wilshaw v. Smith*, 9 Mod. 441.    <sup>8</sup> 7 Geo. II. c. 20.

now directs the procedure in these cases, infant mortgagors are debarred from the privilege of disposing of a foreclosure suit in this manner, for the second section of that act authorizes the court to make an order on such notion, only on the terms of the defendant's admitting the plaintiff's title, an act which in all ordinary cases an infant is considered incapable of doing.

Under the same act, an action at law on the mortgage-covenants may be terminated without going to trial.

Upon an assignment of a mortgage, the concurrence of the mortgagor should be obtained, or if this cannot be done, inquiry should be made from him as to the amount due on the mortgage, and notice of the transfer, when completed, should also be given to him, for if the mortgagor had paid any part of the mortgage debt before the assignment, or even afterwards, whilst such assignment was unknown to him, he would be entitled to the benefit of such payment,<sup>a</sup> even as against an assignee, who might, in ignorance of those payments, have dealt with the mortgagee on the footing of the whole amount secured by the mortgage-deed being still due; the concurrence of the mortgagor in the assignment, or a declaration, (which, if possible, should be in writing,) as to the actual amount due, should, therefore, always be obtained as the only effectual security against those dangers which are always attendant upon the transfer of choses in action of almost every description.<sup>b</sup>

The concurrence of the mortgagor in assignments of a mortgage is also of great importance where an arrear of interest or costs are due to the mortgagee, and intended to be paid to him by the assignee; for,

<sup>a</sup> Williams v. Sorrell, 4 Ves. 389.

<sup>b</sup> The points here referred to have been previously considered in the Observations on Assignments of Choses in Action, and the Purchase of Equities of Redemption, and *ante*, 441, n.

without the mortgagor's consent, the assignee will not be entitled to charge interest on the sums paid.\* If the mortgagor should concur for the purpose of giving interest on such sums, it will be considered in the light of a further advance, and a proportionate *ad valorem* stamp accordingly payable.\*

The mortgagor, or his assignees or representatives, are entitled to redeem the premises on payment of principal, interest, and costs, and such expenses as the mortgagee may have incurred in the protection and preservation of the property, at any time within twenty years next after the mortgagee entered into possession or receipt of the rents of the property, or from the time at which a written acknowledgment of the mortgagor's title was given to the owner, or one of the owners, of the equity of redemption by the mortgagee or person claiming under him; but where the mortgage was originally made to, or subsequently becomes vested in several persons, an acknowledgment by one of such persons will only preserve the right of redemption in the share of the premises to which such person was entitled;<sup>d</sup> but after the expiration of the period of 20 years, no bill for redemption will be entertained.

Assignment of a mortgage where the mortgagor joins.

On the transfer of a mortgage in fee, where the mortgagor joins, the premises are conveyed to the new mortgagee, with a fresh proviso for redemption, and the old mortgagee covenants that he has done no act to incumber, and the mortgagor covenants for the title, as in the original mortgage.

Assignment of a mortgage in fee when the mortgagor is not a party.

Where the mortgagor is not a party to the assignment, the principal and interest due is first assigned with a power of attorney, and then the premises are conveyed by the mortgagee to the assignee, subject to such right and equity of redemption as the premises are liable to under the original mortgage; with covenants that the mortgagee has not received,

\* *Ante*, 437, n.

\* See *post*. Stamps.

<sup>d</sup> 3d and 4th William IV. c. 27, sec. 28; *ante*, 173.

released, or assigned the mortgage-money or interest, that he has done no act to incumber the premises, and for further assurance.

On the transfer of a mortgage by demise; the original security should be recited, and the amount due thereon should be set forth, also the agreement by the new mortgagee to lend the sum required by the mortgagor to pay off the old mortgagee. The premises are then assigned by the words "bargain, sell, assign, transfer, and set over" to the new mortgagee, his executors, &c.; to hold for the residue of the term, subject to a proviso that, upon payment of the principal and interest on a given day, the new mortgagee will surrender the term to the mortgagor, his heirs or assigns, or that he will assign the same to such person or persons as he or they shall direct or appoint.

Transfer of a mortgage by demise.

If the new mortgagee requires that the mortgage shall be converted into a mortgage in fee,\* the indenture for such purpose will be made between the mortgagor of the first part, the mortgagee of the term of the second part, and the intended mortgagee of the third part. After reciting the mortgage by demise, that the money remains due, that payment has been required, and that the new mortgagee has agreed to lend the sum of L. , to enable the mortgagor to pay off the original sum, and to supply his other occasions, the mortgagor grants, bargains, sells, and releases; and the mortgagee, for the purpose of surrendering the term, will assign, surrender, and yield up, unto the new mortgagee, his heirs and assigns, with the usual proviso for redemption, as in a mortgage in fee; the old mortgagee must covenant that he has done no act to incumber; and the mortgagor will enter into covenants as in other mortgages in fee.

Where the mortgage by demise is converted into a mortgage in fee.

Upon the advance of a further sum, the further charge should contain a covenant and declaration by

Further charge.

\* If it is intended to keep the term on foot, the fee may be conveyed by the mortgagor to the assignee, the first mortgage assigning the term to a trustee. *Ante*, p. 441.

the mortgagor that the premises shall stand and be a security as well for the last sum advanced and interest as for the former loan, and that the mortgagee shall stand seised of the premises "in trust, out of the rents and profits of the hereditaments to raise such sums of money as will pay off as well the sum last advanced and interest as the former sum and interest, and subject thereto, to the (*mortgagor in fee.*") If an attendant term has been assigned in the mortgage, the further charge should contain a declaration that the trustee shall stand possessed of the term, in trust for securing as well the sum last advanced as the sum before lent, with interest on them both.

Loans by  
trustees.

It may be useful to notice, for the guidance of trustees having money to invest, that, in a recent case, *Stickney v. Sewell*, 1 M. and Cr. 8, the present Lord Chancellor, when Master of the Rolls, stated, that to advance two-thirds of the value of property is admitted to be within the rule of ordinary prudence, but, added the learned judge, that is with reference to property of a permanent value, as freehold land. The same rule does not apply to property in houses, which fluctuates in value, and is always deteriorating.

## CHAPTER XXVI.

### NOTARIAL FORMS:

#### CERTIFICATES.

I, J. M., of, &c., notary-public, by royal authority duly admitted and sworn, do hereby certify and attest unto all whom it may concern, that the letter of attorney hereunto annexed was duly signed and sealed by A. B., therein named, in my presence, and in the presence of C. D., of, &c., and E. F., of, &c. Whereof an act being requested, I have granted the same under my notarial firm and seal of office, to serve and avail as occasion shall or may require. Done and passed at, &c., aforesaid, this            day of, &c., in the year of our Lord 18    .

Certificate of the due execution of a letter of attorney.

On this    day of, &c., before me, J. M., notary-public, by, &c., personally came and appeared A. B., of, &c., and C. D., of, &c., who severally declared, that they these appearers have for many years known and been well acquainted with E. F., son of G. H., late of, &c., but now of, &c.; and that these appearers verily believe the said E. F. to be the residuary heir named in the will of I. K., of, &c., aforesaid, deceased. - And I do hereby certify, that the signature of the said E. F., written and subscribed hereunder, is of the true and proper handwriting of

Certificate of the identity of a person.

the said E. F., he having subscribed the same in the presence of these appearers, and also in my presence. In testimony whereof, I have hereunto set my hand, at, &c., this, &c.

Certificate of  
baptism.

I, J. M., of, &c., notary-public, by, &c., do hereby certify and attest unto all whom it may concern, that A. B., by whom the annexed certificate of baptism is written and signed, is the clerk of the parish church of ; that he wrote and signed the same in my presence; and that to his certificates, in his said quality, full faith and credit are given in court and thereout. And I do further certify and attest, that I saw and examined the register of the said baptism in the book kept in the vestry of the said church, from whence the same was extracted by the said parish clerk; and that I found the said certificate to be a true and faithful copy thereof. In testimony, &c.

Certificate of  
a duplicate  
protest.

I, J. M., of, &c., notary-public, by, &c., do hereby certify, &c., that the above and before written is a duplicate or true copy of a certain instrument of protest made before me, taken and extracted from my register of all notarial acts by and before me granted and passed, marked , folio . In witness, &c.

Certificate of  
the signature  
of a chief ma-  
gistrate.

I, J. M., of, &c., notary-public, by, &c., do hereby certify, &c., that the signature A. B., mayor, at the foot of the foregoing affidavit, is of the own and proper handwriting of the right honourable A. B., lord mayor of this city, in whose presence oath was this day administered, in due form of law, to Mr C. D., the deponent named in the said affidavit, and who signed the same in my presence; wherefore full faith and credit ought to be given thereto in court and thereout. London, this day of, &c.

Certificate of  
an account.

I, J. M., of, &c., notary-public, by, &c., do hereby certify, &c., that the account hereunto annexed is a true and faithful extract from the book called the ledger of Mr A. B., of, &c.; I, the said notary, having this day collated the same, and found it to agree

in every respect with the said ledger ; an act whereof being required of me the said notary, I have granted these presents under my notarial firm and seal of office, to serve and avail as occasion shall or may require. Done, &c.

I, J. M., of, &c., notary-public, by, &c., do hereby certify, &c., that on this                      day of, &c., in the year of our Lord, &c., personally came and appeared Mr A. B., of the said city of, &c., merchant, who produced to me, the said notary, a policy of insurance, wherein I saw and read, that the said A. B. did, on the                      day of, &c., now last past, and as well in his own name as for and in the name and names of all and every other person to whom the same did, might, or should appertain, in part or in all, make assurances, and cause himself and them, and every of them, to be insured, lost or not lost, at and from, &c., to, &c., in the sum of, &c., upon any kind of goods and merchandises whatsoever, laden or to be laden on board the good ship or vessel called the, &c., whereof, &c., was master. And I do further certify, that at the foot of the said policy of insurance so produced to me, the said notary as aforesaid, was written, C. D., L.                      per received day of                      , E. F., L.                      per received day of, &c., of which an act being requested, &c., (see p. 467.)

Certificate of signatures to a policy of insurance.

We, the undersigned merchants of this                      of                      do hereby certify that J. M., who hath granted and signed the foregoing, &c., is a public notary of this, &c., and that to all acts and instruments thus by him signed, full faith and credit are and ought to

Certificate of merchants to the signature of a notary.\*

\* We, the undersigned public notaries of the, &c., of, &c., do hereby certify unto all whom it may concern, that J. M., who hath signed the foregoing act, is a sworn public notary, practising in this, &c., and that to all acts thus by him signed, full faith and credit are and ought to be given in judicature and thereout. Witness our hands in, &c., this day of, &c.

Another form, when the certificate is given by notaries.



be given in court and thereout. Dated this day of, &c., in the year, &c.

Certificate of  
the damage of  
goods by sea-  
water.

I, J. M., of, &c., notary-public, by, &c., do hereby certify and attest, &c., that on this day of, &c., before me came and appeared A. B., of, &c., agent for C. D., of, &c., and G. H., of, &c., who severally declared as follows: And first, the said A. B. for himself declared, that on the day of, &c., now last past, at the request of the said C. D., he entered at the custom-house of the said, &c., bales of paper marked, &c., and No., &c., from on board the ship or vessel called the, &c., whereof, &c., was master, from, &c.; and that the said, &c., bales of paper, when landed and opened at the quays of the said custom-house, were found to be damaged, and, &c.; and upon careful examination by the said declarant of the said, &c., bales of paper, the said damage appeared to be occasioned by sea-water, [*or as the case may be.*] And the said G. H. for himself declared, that he purchased of the said C. D. the said, &c., bales of paper, at and for the sum of, &c., the same being, &c., damaged as aforesaid, and therefore depreciated in value; and that had the said, &c., bales of paper arrived in good and sound condition, they would have been worth the full sum of, &c.; all which they the said appearers declare to be true, and that they are ready to confirm the same on oath when thereunto required. Of which an act, &c.

Another certificate, and that half the duties were remitted.

I, J. M., of, &c., notary-public, by, &c., do hereby certify, &c., that on this day of, &c., at the request of A. B., of, &c., I, the said notary, went to the warehouse belonging to the custom-house of the said, &c., of, &c., and that there speaking to one of the clerks belonging to the said warehouse, he produced to me a book called, &c., wherein at fol. &c., I found, saw, and read, that on the day of, &c., last, the said A. B. entered at the said custom-house of the said, &c., of, &c., casks of, &c., marked, &c., No., &c., containing, &c., which came from, &c., in the ship or vessel called the, &c., C. D., master; and

## LETTERS OF ATTORNEY OR PROCURATIONS. 471

### LETTERS OF ATTORNEY OR PROCURATIONS.

By this public instrument of procuration or letter of attorney, be it known to all whom it may concern, that on this      day of, &c., in the year of our Lord 184      , before me, J. M., of, &c., notary-public, by royal authority duly admitted and sworn, and in the presence of the witnesses hereinafter mentioned, personally came and appeared A. B., of, &c., who exhibited the annexed probate of the last will and testament of E. F., formerly of, &c., in the island of, &c., but late of, &c.; and also did then and there, as executor named and appointed in and by the said last will and testament of the said E. F., (he having been duly qualified to act as such by due form of law,) in the presence of me the said notary and witnesses, declare to have made, ordained, nominated, constituted, and appointed, and that by these presents he doth make, ordain, nominate, constitute, and appoint, C. D., of, &c., his the said A. B.'s, as such executor as aforesaid, true and lawful attorney, for him, in his name, place, and stead, to transact, manage, and conduct all the affairs, matters, and concerns of and belonging to the said E. F., or in which he, the said E. F., was in his lifetime interested; or in which his executors are now interested; and for him, the said C. D., for and in the name of the said appearer A. B., as such executor of the said E. F. as aforesaid, to ask, demand, sue for, recover, and receive of and from G. H., of, &c., in the said island of, &c., and of and from all

From an executor, to manage affairs, and to receive debts, &c., in the West Indies.

that upon the said goods and merchandises being surveyed in the said warehouse, it appeared and was adjudged, that casks of the said, &c., part of the above-mentioned goods and merchandises, had received damage by [*as the case may be,*] to the amount of one-half of the value thereof, wherefore one-half of her Majesty's duties on the said goods and merchandises was accordingly remitted. Of which an act, &c., (see p. 467.)

and every other person and persons whom it doth, shall, or may concern, at, &c., in the said island of, &c., or in any other island or islands in the West Indies, all such sum and sums of money whatsoever, which now is or are due and owing, or which shall hereafter become due and owing, to the estate of the said E. F.; and for him, the said C. D., in the name of the said A. B., as such executor of the said E. F. as aforesaid, to take into his possession, custody, and power, all effects, goods, and chattels of and belonging to the estate of the said E. F., and also to compel, by due course of law, all persons who shall or may have any of the effects, goods, and chattels of or belonging to the estate of the said E. F., to deliver up the same. And also for him, the said C. D., for and in the name of the said A. B., as such executor as aforesaid, to ask, demand, sue for, recover, and receive, of and from the representatives, heirs, executors, or administrators of all or any such person or persons as aforesaid, all such debts, dues, sum and sums of money whatsoever, as now are due and owing to the estate of the said E. F. upon or by virtue of any bond, bill, note, deed, or other kind of security whatsoever, or upon or by virtue of the balance of any account or accounts, or by any other ways and means whatsoever, and to settle, allow, and adjust their respective accounts as to the said C. D. shall seem meet; and also to compound for the same, and to accept a part for the whole, if need be; and upon receipt of any such sum and sums of money, effects, goods, and chattels paid to the said C. D. for the use of the said A. B., as such executor as aforesaid, to transmit the same as soon as convenient may be, by such ways and means as he, the said C. D., in his discretion shall think proper. And also for him, the said A. B., and in his name as such executor as aforesaid, to give, sign, seal, and execute good and sufficient releases, and full and effectual receipts, acquittances, and discharges for the same; and upon non-payment thereof, or upon refusal or delay in

bringing in, adjusting, and settling such accounts, he, the said A. B., as such executor as aforesaid, doth hereby fully authorize and empower the said C. D., in the name of him, the said A. B., as such executor as aforesaid, to commence and prosecute any action or actions, suit or suits, in any of the courts of law or equity in the island of           aforesaid, or in any other island or islands in the West Indies; and to use any other lawful or equitable ways and means for the recovery of any sum or sums of money, goods, chattels, or effects of and belonging to the estate of the said E. F., or for the bringing any person or persons to answer for the settling or adjusting of his or their respective accounts. And he, the said A. B., as such executor as aforesaid, doth hereby further authorize and empower the said C. D., for and in the name of the said A. B., as such executor as aforesaid, and as his act and deed as such executor as aforesaid, to make, sign, seal, deliver, and execute any deed or instrument whatsoever, which to him, the said C. D., shall seem just and equitable, touching or concerning, or which may in any way relate to the discharging of any person or persons whomsoever on whom the said E. F. in his lifetime had any claim or demand, or which the said A. B., as executor to the said E. F., now hath upon such person or persons, or upon such estates, effects, goods, or chattels. And the said A. B., as such executor as aforesaid, doth hereby authorize and empower the said C. D. to substitute or appoint one or more person or persons as his substitute or substitutes in the place of him, the said C. D. And the said A. B., as such executor as aforesaid, doth declare that the powers and authorities hereby given to the said C. D. shall, from the time of such appointment, wholly and absolutely rest in such substitute and substitutes as the said C. D. shall appoint. And generally, for him, the said A. B., as such executor as aforesaid, to do, transact, and perform all and every act and acts, thing and things, needful

and expedient, in and about the premises, and the management of the affairs and concerns of the said E. F., as fully and effectually, to all intents and purposes whatsoever, as he, the said A. B., as such executor as aforesaid, could or might do and transact, if personally present; the said A. B. hereby ratifying, allowing, and confirming, and agreeing to ratify, allow, and confirm, all and whatsoever the said C. D., or his substitutes or substitute, shall legally do or cause to be done by virtue of these presents. In witness, &c.

To recover  
and receive  
money arising  
from the  
cargo of a  
ship  
stranded.

By this public instrument, &c., [as in last precedent,] and in the presence of the witnesses hereunder written, personally came and appeared C. D., of, &c., who declared to have made, ordained, constituted, and appointed, as by these presents he doth make, ordain, constitute, and appoint, E. F. and G. H., of, &c., to be his true and lawful attorney and attorneys, jointly and separately, giving and by these presents granting unto his said attorneys full power and authority, for him, the said constituent, and in his name, to ask, demand, have, take, and receive of and from the commissioners appointed for the care of the cargo shipped and laden on board the said ship, or whomsoever else it doth, shall, or may concern, all such sum and sums of money as may have been made by the sale and produce of the several goods shipped by him, the said constituent, on board the ship called the, &c., whereof, &c., was master, on a voyage to, &c., the particulars of which goods are mentioned in the invoices hereunto annexed, (which said ship stranded on her voyage on the      day of

last,) and for what shall be received by his attorneys, or either of them, in the name of the said C. D., either as the consignor of the said goods, or as the underwriter or insurer thereof, full and sufficient receipts, acquittances, and discharges to give; and upon non-payment thereof, or of any part thereof, for him the said constituent, and in his name, to commence and prosecute any action or actions, suit or suits, in any courts of law or equity, and to use any other law-

ful or equitable ways and means for the recovery of the same, and every part thereof, giving, &c.

PROTESTS.

A. B., master of the ship or vessel called the, &c., of the burthen of        tons or thereabouts, laden with, &c., sailed from, &c., on the        day of, &c., last, and put into, &c., on the        day of, &c., also last past, where she was wind-bound until the        day of the said month of, &c., when he again set sail, and she arrived at her moorings off, &c., in the river Thames, this        day of        18        ; but fearing damage, he enters his protest accordingly. Entries of protests.\*

By this public instrument of protest, &c., that on, &c., before me, J. M., notary-public, &c., personally came and appeared A. B., master of the ship or vessel called the, &c., of the burthen of        tons or thereabouts, belonging to the port of, &c., and C. D., first mate of the said ship, who severally declared, that the said ship or vessel being laden with, &c., they the said appearers on the        day of        set sail on board thereof, from, &c., in, &c., bound directly to this port of, &c., and that the said ship, in the prosecution of her said voyage, on the        day of the said month of, &c., was overtaken by a violent storm and gale of wind, &c., [*state as the case may be,*] in which she shipped very great seas, the water making free passage over the said ship; that on the        day of the said month, the said storm continuing, the sea broke away one of the dead-lights, which was lost, and the said ship was obliged to go before the wind until another dead-light was fixed, after which the said ship proceeded to this port of, &c., and made the Land's End on the Protest against the seas.

\* A. B., master of the ship or vessel called the, &c., of the burthen of, &c., tons or thereabouts, laden with, &c., sailed from, &c., on the        day of, &c., now last past, and she arrived at her moorings at, &c., in the river Thames, the        day of this present month of, &c. ; but fearing damage, he enters his protest accordingly, dated the        day of, &c., 18        . of Another form.

day of, &c., instant, the wind being, &c., and, &c., and afterwards made the best of her way for, &c., where she arrived and moored at, &c., on the day of, &c., instant, at o'clock in, &c. And the said appearers did further severally-declare, that the said ship, at the time of her departure from, &c., aforesaid, upon the said intended voyage, was tight, staunch, and strong, and her hatches well and sufficiently caulked and covered, and was well and sufficiently manned, provided, and furnished with all things needful and necessary for the said voyage, and that during the said voyage the said appearers and ship's company used their utmost endeavours to preserve the said ship and her cargo from damage: and, therefore, the said A. B. did declare and protest, as by these presents he doth solemnly protest, against all and every person or persons whom it shall or may concern, and doth declare, that all damages, losses, and detriments that have happened to the said ship and her cargo, are and ought to be borne by the merchants and freighters interested, or whomsoever else it shall or may concern, (by way of average or otherwise,) the same having occurred as before mentioned, and not by or through the insufficiency of the said ship, or neglect of the said appearer, his officers, or any of his mariners. Of all which an act, &c. (p. 467.)

Protest of a  
ship being  
destroyed by  
fire.

Be it known and made manifest to all to whom these presents shall come, that on this       day of, &c., A. B., master of the ship or vessel called the, &c., of and belonging to the port of, &c., in, &c., of the burthen of       tons or thereabouts, lately lying at a certain bay or harbour called, &c.; C. D., the first mate, and E. F., the second mate of the said ship, severally came and personally appeared before me, J. M., public notary, of the said, &c., and did then and there, of their own free will and voluntary accord, before me, the said public notary, severally and respectively, and each one for himself only, allege, affirm, declare, protest, and say in manner following; that is to say: And first, the said appearers

do, and each of them doth allege, affirm, declare, protest, and say, that on the            day of, &c., they, the said appearers, in the said ship or vessel called the, &c., which was then staunch, firm, tight, strong, and in all respects in good order, properly manned and victualled for sea, sailed from, &c., in, &c., laden with several articles of merchandise, on a voyage from thence for the island of, &c.; that meeting with a heavy gale of wind on the            day of the said month of, &c., in which the said ship lost her foremast and bowsprit, the said appearers were obliged to put into the port of, &c., where every thing being properly fitted, she again proceeded on her intended voyage, and arrived in the harbour of, &c., in the said, &c., on the            day of, &c., last; that on the            day of, &c., last past, after discharging the cargo at, &c., the said ship or vessel sailed for, &c., in the said, &c., where she arrived the same day. And the said appearers did further severally allege, declare, protest, and say, that the said ship or vessel did on, &c., the            day of, &c., instant, take in and complete a full cargo of goods, wares, and merchandises, with which she was to return to, &c. And the said appearers, C. D. and E. F., did further allege and say, that the said ship or vessel did on, &c., the            day of, &c., instant, break ground and run further out of, &c., for the purpose of being in greater readiness, and better prepared to sail for, &c., the place appointed for the fleet to rendezvous. And the said appearer, A. B., for himself separately, did also allege, declare, protest, and say, that on the            day of, &c., instant, he, this appearer, left the said ship or vessel, then lying in, &c., aforesaid, and came to, &c., in order to clear out for the return voyage, and also to procure some additional mariners to navigate her home; that he, this appearer, did on the            day following accordingly clear out the said ship at the custom-house at, &c., aforesaid; and having procured such additional number of mariners as were necessary for the navigation of the said ship,



he sent them round in a boat from, &c., about o'clock in the afternoon of the following, &c., with directions to proceed immediately to, &c., there to join the said ship; and this appearer was informed by the said C. D. and E. F. that such additional mariners did, about o'clock in the, &c., of the same, &c., arrive at, &c., aforesaid. And the said appearer A. B. doth further for himself separately allege, declare, protest, and say, that having so cleared out the said ship, and despatched the said additional hands as aforesaid, he, this appearer, did, about o'clock in the, &c., of the same, &c., viz. the instant, set out from, &c., aforesaid, to proceed by land to, &c., in order to join his said ship; and about o'clock on, &c., morning, the instant, as he was proceeding on his journey, within the distance of about or miles from, &c., he was informed that his ship and cargo were destroyed by fire; and when he arrived at, &c., he found such information to be true. And the said appearers, C. D. and E. F., for themselves, jointly and severally, did further allege, protest, and say, that about after o'clock in the of the instant, whilst G. H., the boatswain of the said ship or vessel called the was attempting to draw off some rum from a puncheon in the after-part of the said ship, on the cabin deck, and was in the act of putting a cock into such puncheon for that purpose, a considerable quantity of rum accidentally gushed out in so sudden a manner, that it immediately caught fire from a candle which was held by a boy at some distance from the said puncheon; that the fire increased with such rapidity, that although every possible exertion was made use of to extinguish it by throwing wet blankets and pails of water upon it, as long as it was possible to remain on board and resist the violence of the flames, and although the people belonging to the said ship were assisted by the men and boats from all the other ships then lying at, &c., aforesaid, the flames continued to increase to so great a

degree, that all the exertions of these appearers and the other persons who assisted proved fruitless ; and about, &c., after, &c., o'clock in the, &c., it burnt so furiously, that it was impossible for any person to stay any longer on board the said ship or vessel, the fire being then so near the powder-room, that it was expected she would blow up every moment. It, therefore, became absolutely necessary, for the preservation of the crew, to quit the ship, and it was conceived prudent and best to cut the cable to let her run upon a reef, with a view to save as much of the remaining part of the ship and cargo as possible. That about o'clock the fire reached the powder-room, and all the after-part of the ship was immediately blown to pieces. It then continued flaming till about o'clock in the at which time she was entirely burnt down and destroyed to the water's edge. And the said appearers did each of them further allege, declare, protest, and say, that any loss, damage, or accident which has already happened, or may be sustained, either to the said ship or vessel called the , or her cargo on board, or to either of them, is solely owing to the aforesaid accident, and not by or through any neglect of duty of him, the said A. B., or any of the officers or mariners on board. And I, the said public notary, at the request of the said A. B., have protested, and by these presents do solemnly protest, against all and every person and persons whomsoever, whom it doth, shall, or may concern, for and on account of all and all manner of damages, losses, prejudices, and detriments whatsoever which the said ship or vessel called the, &c., and her cargo on board, or either of them, or any part thereof, have or hath already sustained, or may hereafter sustain ; and also against all charges and expenses whatsoever which the owners or freighters thereof, or any or either of them, or any other person or persons whomsoever, may be put to or sustain, for or by reason or means of the aforesaid accident, or otherwise relating thereto. All which

matters and things were declared, alleged, and affirmed, as before is set forth, in the presence of me, the said notary; and, therefore, I have hereunto subscribed my name and affixed my notarial seal, being requested to testify and certify the premises. Thus done and protested at, &c., aforesaid, the day and year first above written.

In case of a  
ship being  
taken.\*

By this public instrument of declaration and protest be it known, that, &c., before me, J. M., of, &c.,

Of a neutral  
ship being  
taken.

\* By this, &c., [as above,] and did then and there declare, that they sailed in the said ship from, &c., in the, &c., of, &c., on the            day of, &c., last past, she being laden with a cargo consisting of, &c., bound to the, &c., of, &c., although cleared out for the island of, &c., aforesaid; that on her passage to, &c., aforesaid, on the            day of, &c., last, being then about            leagues to the, &c., of the island of, &c., the said ship was forcibly seized and taken by a, &c., privateer, of, &c., guns, called the, &c., commanded by, &c., and owned by Messrs L. M. and N. O., of, &c., in the island of, &c.; that on the said ship being hailed by the privateer, he, the said A. B., was immediately ordered on board the said privateer with all his papers; that he accordingly went on board the said privateer, and carried with him the papers, when he and the said papers were detained; that the said appearer, C. D., and others of the crew of the ship, were also taken on board the said privateer, and a prize-master and others of the said, &c., privateer, were put on board the said ship, with orders to carry her into the, &c., of, &c., in the said island of, &c. That about, &c., after the said exchange of men, and orders aforesaid, a ship appeared in sight, which gave chase to the said privateer and ship; upon which the appearers, and others belonging to the said ship, the, &c., were put into the boat that belonged to the said ship, which at the time was alongside of the said privateer, with directions to return and take possession of the said ship the, &c., giving him, the appearer, A. B., the papers that contained the invoices, bills of lading, and protections belonging to the said ship; but that, after being about half way from the said privateer to the said ship, they were ordered back, and the several papers taken from the said appearer, A. B. That the ship continued to chase the said privateer and ship, the, &c.; but on account of its

notary-public, by royal authority duly admitted and sworn, and in the presence of the witnesses hereunder mentioned, personally came and appeared A. B., late master of the ship or vessel called the, &c., of, &c., of the burthen of            tons or thereabouts, and C. D., late first mate of the said ship, who declared that the aforesaid ship, laden with, &c., being tight, strong, staunch, well and sufficiently victualled, manned, provided, and furnished with all things needful and necessary in every respect, they, on the day of, &c., in the year, &c., now last past, set sail

being night, the said privateer made her escape, and carried the said appearers to the said, &c., of, &c., in the said island of, &c., where they arrived on the            day of, &c., last, and where the said appearer and crew were put on board a prison-ship, called the, &c., in which they remained until the            day of the said month of, &c. ; that the said appearer, A. B., demanded his several papers from the commander, and also from the owners of the said privateer, but they were refused him ; and that he could not procure a protest in the said island of, &c., on account of his not having money to pay for the same. Wherefore the said A. B., late master of the ship the, &c., as aforesaid, on his own behalf, and on the part and behalf of the owners, and of all others interested, or in any respect concerned in the said ship the, &c., and her cargo on board, or either of them, doth hereby protest against the said, &c., privateer, her commander, officers, and mariners, and all others whom it doth, shall, or may concern ; and also against her guns, tackle, apparel, and furniture, for so having captured the said ship and her cargo, and for taking out the men and papers, and for sending the prize-master with men on board, with directions to carry the said ship the, &c., to the said, &c., of, &c., in the said island of, &c., and for all losses, costs, damages, and expenses already suffered, or which may hereafter accrue by reason of the foregoing premises. And I, the said notary, at the request of the said A. B., the late master of the ship the, &c., did, and do hereby, solemnly protest against the same, in manner and form aforesaid ; so that all matters of insurance respecting the said ship the, &c., and her cargo on board, or either of them, may hereafter properly be adjusted and settled. Thus done, &c., (see p. 480.)

and departed from, &c., at                      o'clock in the morning, bound to, &c., and from thence to, &c., in company with the fleet then in, &c., under convey of her Majesty's ship the, &c., whereof, &c., was commander, laying off and on; that at                      o'clock, p.m., her Majesty's said ship the, &c., made a signal to keep in his wake, at the same time made sail with a moderate breeze; that at                      o'clock, p.m., the whole fleet became becalmed, under, &c.; that at that time they could not observe the commodore's lights, if he carried any; that at daylight on the                      day of the said month of, &c., the sea quite calm,                      ships of the said fleet being in company, and also could see from the topmast-head the remainder of the fleet under, &c., at                      o'clock, p.m., a strong gale of wind, which sprung the topmast of the said ship the, &c.; that during the time of repairing the same, the said ship dropped considerably astern of the rest of the fleet; that on the                      day of the said month of, &c., about o'clock, a.m., her Majesty's said ship the                      hove in sight, standing to the, &c., when the said ship hoisted her ensign in the main-topmast shrouds, and soon after tacked to the, &c.; and made a signal for the ships astern to make more sail, and in                      hours was completely out of sight; that they became becalmed at                      p.m. of the                      day of the said month of, &c., until the said ship was taken, as hereinafter declared and set forth; that at                      o'clock, a.m., they observed two, &c., coming round, &c., point, with extraordinary sail; that they soon perceived them to be two, &c., and enemies; and that on this they prepared their guns and other necessities, and put the said ship in the best order, state, and condition for an engagement, in order to defend the said ship, and prevent her from being taken. At                      o'clock, a.m., the said two, &c., came up with the said ship the, &c., when one of the said, &c., rowed under the said ship's quarter and boarded; at which time, from the superiority of force, he, this

appearer, A. B., having consulted the officers and crew of his said ship, conceived it most prudent and advisable, in order to save the lives of the said ship's company and passengers, to surrender the said ship to the said two, &c., or to one of them, without making any resistance in boarding; that after the said ship was so taken and surrendered to the said two, &c., or to one of them, he, this appearer, A. B., with part of his said ship's company and passengers, was put and taken on board one of the said, &c., the rest of the said ship's company and passengers having remained and continued on board the said brig; that the said two, &c., or one of them, kept and detained the said ship in their custody and possession, in company with them, cruising at sea, from the said day of the said month of, &c., until the of the said month, when the said ship was carried into, &c.; when he, this appearer, A. B., with all his said ship's company and passengers, was put and confined in prison, in the said island of, &c. Therefore the said A. B. did declare to protest, as by these presents he doth most solemnly protest, against all and every person or persons whomsoever; and declares the loss of the said ship the, &c., with her furniture and tackle, is to be borne by all and every person or persons whom it shall or may concern; and doth further declare that the said ship was so taken by the two, &c., or one of them, neither through any neglect of the said appearer, A. B., or any of his officers or mariners, nor through any insufficiency or defect of the said ship, as he is able to prove. Of all which an act, &c.

By this public instrument of protest, &c., that on, Of demur-  
&c., before me, J. M., notary-public, &c., personally rage.  
came and appeared A. B., of, &c., mariner, master of the ship or vessel called the, &c., of the burthen of, &c., or thereabouts, now lying in, &c., who declared, that whereas he, the said A. B., had, by charter-party bearing date the, &c., day of, &c., last past, let the said ship to freight to Messrs C. D. and Co.

of, &c., for a voyage from, &c., aforesaid, to this port of, &c., where she arrived at, &c., in the, &c., of, &c., on the day of, &c., instant, and hath since lain there running days, in order to unload the said ship, pursuant to the said charter-party. And whereas, by a bill of lading dated at, &c., aforesaid, the day of the said month of, &c., the said C. D. and Co. did consign to Messrs E. F., of, &c., merchants, &c., and, &c., marked as in the margin, and the said appearer, in consequence thereof, immediately gave notice of his arrival at, &c., in the, &c., of, &c., to the said Messrs E. F. and Co., and hath requested them to receive and take out of the said ship the said, &c., and, &c., and to pay the freight and customs for the same, which they have hitherto refused and delayed to do, to the great damage and detriment of the said appearer and his said ship. And, therefore, the said appearer required me, the said notary, to protest, as by these presents I do most solemnly protest, as well against the said E. F. and Co., as against the said C. D. and Co., and all others whom it doth or may concern, for breach of the said charter-party, and for all demurrage, damage, loss, detriment, and prejudice already suffered and sustained, or to be suffered and sustained by him, the said appearer, and the owners of the said ship, for or by reason or means of the said E. F. and Co. not having entered and taken out the said, &c., and, &c., and paid the freight and customs for the same, according to the contents of the said charter-party and bill of lading, and for what else the said appearer can, may, or ought to protest, to recover the same in time and place convenient. Of all which an act, &c.

For refusing  
to sign a bill  
of lading for  
goods shipped  
at freight  
contracted.

By this public instrument of protest, &c., that on, &c., before me, J. M., notary-public, &c., personally came and appeared A. B., of, &c., who declared, and by these presents doth declare, that on the day of, &c., instant, he, this declarant, did agree with C. D., master of the ship called the, &c., bound out

and from this port of, &c., for, &c., in, &c., to ship on board the said ship, for, &c., aforesaid, &c., of, &c., and to pay for the same at and after the rate of, &c., per ton, accounting        feet square to a ton. And that he, the said declarant, did accordingly ship on board the said ship the, &c., the said, &c., of, &c., and did afterwards exhibit to the said C. D. the receipt given by the chief mate of the said ship for the said, &c., of, &c., when the same was received on board the said ship, and required him to sign bills of lading for the same, pursuant to the said agreement; but the said C. D., master of the said ship the        refused to sign such bills of lading, demanding that the said declarant [*as the case may be*] should pay for the freight of the said, &c., of, &c., by the, &c., contrary to the agreement above mentioned. And, therefore, the said declarant required me, the said notary, to protest against the said C. D. for not performing his said agreement, and for refusing to sign bills of lading pursuant thereto; and for all loss, damage, and detriment that may be sustained by reason thereof. Thereupon I, the said notary, in company with the said A. B., went to the said C. D., and demanded and required him to sign bills of lading for the said, &c., of, &c., shipped on board his said ship by the said A. B., and to insert therein that the freight should be paid for the same at the rate of, &c., per ton, according to their said agreement; to which the said C. D. answered, [*state the answer given* ;] which answer not being satisfactory, I, the said notary, did declare that I would protest, and by these presents (at the request aforesaid) I do solemnly protest, as well against the said C. D., as against all others whom it doth or may concern, for all loss, damage, and detriment which may happen or be sustained for or by reason or means of the said C. D. refusing to sign bills of lading for the said, &c., of, &c., pursuant to the agreement above mentioned, and for whatever else can or ought to be protested concerning the premises, to be reco-



vered in time and place convenient. Whereof an act, &c.

For breach of  
charter-party.

By this public instrument of declaration and protest be it known unto all whom it may concern, that on, &c., before me, J. M., of, &c., notary-public, &c., personally came and appeared A. B. and C. D., of, &c., who declared, that whereas E. F., master of the ship or vessel called the, &c., of the burthen of tons or thereabouts, had, by charter-party under the hand and seal of him, the said E. F., bearing date the, &c., of, &c., instant, let the said ship unto the said appearers, for a voyage with her to be made from this port of, &c., to, &c., in, &c. And whereas, in the said charter-party, among other things, it was agreed, that the said E. F. would depart with the said ship out of the, &c., wind and weather permitting, on or before the day of, &c., instant, in order to proceed on the said voyage. And whereas they, the said appearers, having fully laden the said ship, [*as the case may be,*] have several times since the day of, &c., instant, ordered and required the said E. F. to depart and sail with his said ship out of the said, &c., in order to proceed on her said voyage; and notwithstanding such orders, he, the said E. F., hath hitherto neglected, and refused and delayed to proceed on the voyage aforesaid, in manifest breach of the said charter-party. Therefore, they, the said appearers, requested me, the said notary, to protest, as I do by these presents most solemnly protest, as well against the said E. F., as all others whom it may or doth concern, for breach of the said charter-party in not sailing out of the said to proceed on the said voyage, on or before the said day of, &c., instant; and for all costs, loss, damage, and detriment which they, the said appearers, have already suffered and sustained, or shall or may hereafter suffer or sustain, by reason of the said ship not departing and proceeding on her voyage as aforesaid, or otherwise howsoever, and for what else the said appearers can, may, or ought to protest, to

recover the same in time and place convenient.  
Whereof an act, &c.<sup>5</sup>

By this public instrument of declaration and protest be it known, that on this                      of, &c., in the year of our Lord, &c., before me, J. M., of London, notary-public, &c., personally came and appeared A. B., late master and owner of the ship or vessel called the, &c., of the burthen of                      tons or thereabouts, who declared that he, this appearer, on the day of, &c., now last past, on his voyage from, &c., to, &c., laden with, &c., met with very boisterous weather, whereby his said ship or vessel sustained so much damage, that he, this appearer, was obliged and did run into the, &c., of, &c., in order to have his said damage repaired; and that after his said ship had been there substantially repaired, and in every respect put into good condition, he, this appearer, did, on the                      day of, &c., now last past, cause an insurance to be made in this city of London, and his said ship to be underwritten for the sum of L.                      , of lawful money of Great Britain, from, &c., aforesaid, to, &c., his place of destination; for which the said appearer did pay, or cause to be paid, a premium at and after the rate of, &c., of like lawful money per cent., as in and by the policy of insurance, signed and subscribed on the said day of, &c., by, &c., and, &c., of the said city of London, underwriters, each of them for the sum of L.                      , relation being thereto had, may more fully and at large appear. And this appearer further declares, that he, the said appearer, his said ship being tight, strong, staunch, and in good order

Of abandonment, and also against underwriters for non-payment of insurance.

<sup>5</sup> Afterwards, on the                      day of the said month of, &c., I, the said notary, at the request of the said A. B. and C. D., did intimate the foregoing protest to the within-named E. F., and then and there speaking to the said E. F., I delivered to him an authentic copy thereof, which he took and said, [*state the answer given,*] which answer not being satisfactory to the said requirants, I, the said notary, did and do persist to protest in manner and form aforesaid.

Attestation of intimating and delivering an authentic copy of a protest.

and properly repaired, did, on the       day of, &c., last past, the wind being, &c., set sail from, &c., aforesaid, for, &c., his said place of destination ; but that, in the prosecution of his said voyage, by violent hurricanes, dreadful thunder-storms, and tempestuous weather, between the       and       of the said month of, &c., his said vessel was wrecked, and lost on the coast of, &c. but that, nevertheless, by dint of indefatigable exertion of him, this appearer, and his ship's crew, and assistance from the people of, &c., on the said coast of, &c., some of the tackle and apparel belonging to the said ship was saved, and put under the care, custody, and lock of the governor and magistrates of the said, &c., of, &c. ; that he, this appearer, did apply to the said governor and magistrates for the purpose that the said tackle and apparel so saved, might be disposed of for the benefit and on the account of the underwriters of the said ship, but which the said governor and magistrates refused, alleging that the said tackle and apparel so saved of the said ship must there be kept and detained, to and for the use, behoof, and benefit of those who had insured and underwritten the aforesaid ship ; that he, this appearer, thereupon repaired to this city of London, and there applied to Mr       ship-broker, by whose means he, this appearer, had caused and procured his said ship to be underwritten and insured, and also by me, the undersigned notary, did make repeated applications to the said, &c., and, &c., demanding of them to pay and reimburse to the said A. B. the said sum of L.       as a total loss by him sustained as aforesaid, and by them underwritten and insured as aforesaid ; but that he, this appearer, hath not been able to procure or receive any reimbursement, payment, or satisfaction for the said loss, or any part thereof, either of and from the said, &c., and, &c., or any person or persons on their part, or either of their parts and behalves. He, this appearer, therefore, requested of me, the said notary, to intimate, declare, and give

notice to the said, &c., and, &c., that he, this appearer, did, and by these presents doth abandon, cede, and leave all and every his, this appearer's, right, title, estate, property, profit, interest, claim, and demand whatsoever, of and in the said ship, tackle, apparel, and appurtenances, and every part thereof, to and for the use, property, behoof, and disposal of them, the said, &c., and, &c., and to protest against them, the said, &c., and, &c., and each and every of them, for non-payment and non-reimbursement of the said sum of L. as a total loss

on the said ship by them, the said, &c., and, &c., so insured and underwritten; and for all costs, damages, and charges, accrued and to accrue to him, this appearer, on account of the said, &c., and, &c., and each and every of them, refusing to pay and reimburse the said total loss. Whereupon I, the said notary, at the instance and request, and in the name of him, the said, &c., do hereby declare, intimate, and make known to the said, &c., and, &c., and each and every of them, that he, the said A. B., doth hereby abandon, cede, and leave to them, the said, &c., and, &c., and each and every of them, all his, the said A. B.'s right, title, estate, interest, profit, property, claim, demand, and produce of and in the aforesaid ship or vessel called the, &c., and all and every her tackle, apparel, furniture, and appurtenances, and every produce thereof; and that he, this appearer, doth claim reimbursement of the said sum of L.

as a total loss on his said ship as aforesaid, he, this appearer, hereby declaring to be willing and ready to give, sign, seal, and execute all and every such act, power, and deed, under his hand and seal, as the case may require, to and for the use, and to and for the better enabling the said, &c., and, &c., and each and every of them, to recover, possess, have, take, and enjoy, from the governor and magistrates of the said, &c., and, &c., or whomsoever else it may concern, all and whatsoever shall or may have been saved of the ship or vessel the,

&c., her tackle, apparel, rigging, and appurtenances whatsoever, or any and every part thereof, at, &c., aforesaid or elsewhere. An act whereof being requested of me, the said notary, I have granted these presents under my seal of office, to serve and avail as occasion shall or may require, in the presence of C. D. and E. F.

Protest for not  
executing  
charter-party,  
according to  
memorandum  
of agreement.

On this day of, &c., in the year, &c., at the request of A. B. and C. D., of, &c., I, J. M., of, &c., notary-public, &c., went on board the ship or vessel called the, &c., whereof E. F. is master, now lying in, &c., and presented and exhibited to the said E. F. a memorandum of agreement by him entered into and duly executed with the said A. B. and C. D., setting forth the particulars of an intended charter-party to be signed and executed by him, the said E. F., of the one part, and the said A. B. and C. D. of the other part; and demanded of him the fulfilment of the said memorandum of agreement, and to execute and sign the charter-party made and drawn according to the said memorandum of agreement, which I then exhibited and presented unto him. And upon his refusing to do the same, I asked of him the reason for such refusal; whereunto he answered, [*the answer given;*] which answer not being satisfactory, I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest, as well against the said E. F., as all others whom it shall or may concern, for all damages, costs, charges, expenses, or loss, that may any ways be sustained by or arise to them, the said A. B. and C. D., on account of the said E. F. not fulfilling his said memorandum of agreement, and signing the said charter-party, and not having his vessel ready to proceed and sail on the voyages therein mentioned. Thus done, &c. (*see p. 480.*)

### *Protests of Bills of Exchange.*

Common protest of a foreign bill.

On this day of, &c., in the year, &c., at the request of Mr. A. B., of the city of London, mer-

chant, and bearer of the original bill of exchange, whereof a true copy is on the other side written, I, J. M., of the said city, notary-public, by royal authority duly admitted and sworn, went to the house of Mr C. D., on whom the said bill is drawn, and there speaking with a clerk in the counting-house, I produced and exhibited unto him the said original bill of exchange, and demanded acceptance thereof, to which he answered that, &c., [*state the exact answer given.*] Which answer not being satisfactory, I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest, as well against the drawer of the said bill of exchange, as against all others whom it doth or may concern, for exchanges, re-exchanges, damages, costs, charges, and interests suffered, or to be suffered, for want of acceptance of the said bill of exchange. Thus done in the presence of E. F. and G. H., witnesses hereunto required.<sup>b</sup>

On this                    day of, &c., at the request of Mr A. B., of the city of London, merchant, and bearer of the original bill of exchange, whereof a true copy is on the other side written, I, J. M., of the said city, notary-public, by royal authority duly admitted and sworn, having perused and read the London Gazette, bearing date the                    day of, &c., instant, found that C. D., the acceptor of the said bill of exchange, was therein declared a bankrupt, in pursuance of a fiat in bankruptcy under the hand of the Lord High Chancellor of Great Britain, awarded and issued against him; in consequence whereof, I, the said notary, went to the dwelling-house of the said C. D.,

Protest of a bill when the acceptor becomes a bankrupt, for better security.

<sup>b</sup> Afterwards, on the same day, month, and year, before me, the said notary, and witnesses, personally came and appeared, Mr J. K., of this city, merchant, who declared he was ready and would accept the said bill of exchange now under protest, for the honour and account of Mr L. M., the drawer, [*as the case may be;*] holding him, the said drawer thereof, and all others concerned, always obliged to him, the said appearer, for re-imbursement, in due form of law.

Act of honour.

and there speaking with a clerk, I demanded security for the due payment of the said bill of exchange, when the same shall become payable; when the said clerk answered, that the said C. D. was a bankrupt, and had given no directions respecting the said bill. Whereupon I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest, as well against the drawer and acceptor of the said bill, as against all others whom it doth or may concern, for exchanges, re-exchanges, damages, costs, charges, and interests, suffered, or to be suffered, for want of better security for payment of the said bill of exchange, when due and payable. Thus done, &c.

Protest of  
an inland bill  
of exchange.

On this            day of, &c., in the year of, &c., at the request of Mr A. B., of this city of London, &c., and bearer of the original bill of exchange, whereof a true copy is on the other side written, I, J. M., of the said city, notary-public, &c., went to the house of Mr C. D., on whom the said bill is drawn, and there speaking with the said Mr C. D., I exhibited unto him the said original bill of exchange, and demanded payment thereof, to which he answered that, &c. Therefore I, the said notary, at the request of the said A. B., do hereby, in the presence of the witnesses hereunder written, protest the said bill, dated in London the day and year in the beginning written.

Protest of  
a bill of ex-  
change for  
want of ac-  
ceptance  
upon a letter.

On the            day of, &c., in the year, &c., Mr A. B., of the city of London, produced unto me, J. M., of the said city, notary-public, &c., a bill of exchange, whereof a true copy is on the other side written, together with a letter signed C. D., for Messrs E. and F., dated at, &c., the            day of, &c., 18   , directed to the said A. B., and which he received by the post, wherein he, the said C. D., says as follows :—"Sir, Yours of the            day of, &c., instant, to Messrs E. and F., is before me, covering Mr G. L.'s bill of exchange on them for L. As the said gentlemen are from home, I have so

orders to accept the said bill," [or as the case may be;] which letter and answer not being satisfactory, I, the said notary, at the request of the said A. B., have protested, &c.

On this            day of, &c., at the request of A. B., &c., and bearer of the original bill of exchange, whereof a true copy is on the other side written, I, J. M., of, &c., went to the house of Mr C. D., on whom the said bill is drawn, and there speaking with the said C. D., I exhibited to him the said original bill of exchange, and demanded payment thereof; whereunto he answered, that he would only pay L.           , part of the said bill, as he, the said C. D., had no more effects of the drawer thereof in his hands; which said sum of L.            the said A. B., the holder of the aforesaid bill, accepted and did receive, and requested me, the said notary, to protest for the remaining sum of L.           , due on the said bill of exchange; whereupon I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest, as well against the drawer of the said bill, as all others whom it doth or may concern, for the remaining sum of L.           , so due on the said bill, for exchange, re-exchanges, and all costs, charges, damages, interest, and expenses suffered, and to be suffered, for want of payment of the said sum of L.           , so due on the said bill of exchange as aforesaid. Thus done, &c.<sup>1</sup>

Protest when an acceptor pays but part of a bill, and act of honour for the remainder.

On this            day of, &c., in the year, &c., before me, J. M., of this city of London, notary-public, &c., personally came and appeared Mr C. D., of the said city, merchant, and produced unto me the original

Counter-protest by reason of a bankruptcy.

<sup>1</sup> Afterwards, on the day, month, and year first above written, before me, the said notary, and witnesses, personally came and appeared Mr E. F., of the said city of London, merchant, who declared that he would pay the remaining sum of L.           , left due and unpaid on the said bill now under protest, for the honour, and on account of, &c., the, &c., thereof; holding him, &c.

Act of honour for the remaining sum due on the above bill of exchange.



bill of exchange, a copy whereof is on the other side written, and the protest for non-acceptance, bearing date the            day of, &c., now last past, by N. O., of, &c., notary-public; and whereas Messrs L. and M., the drawers of the said bill of exchange, by the London Gazette, bearing date the            day of, &c., instant, are declared bankrupts, in pursuance of a fiat in bankruptcy, awarded and issued against them, by means whereof they are incapable of making satisfaction or payment of the said bill of exchange: therefore I, the said notary, at the request of the said Mr C. D., have counter-protested, and by these presents do most solemnly counter-protest, as well against the drawers of the said bill of exchange, as against all others whom it doth or may concern, for exchanges, re-exchanges, and all costs, charges, damages, and interests suffered, and to be suffered, for want of acceptance of the said bill of exchange. Thus done, and counter-protested in London aforesaid, in the presence of O. P. and Q. R., witnesses hereunto required.

Protest of a bill, if drawn on a person not to be found.

On this            day of, &c., in the year, &c., at the request of Mr A. B., of the city of London, merchant, and bearer of the original bill of exchange, whereof a true copy is on the other side written, I, J. M., of the said city, notary-public, &c., went to the Post Office, Bank of England, and on the Royal Exchange, and inquired for Mr C. D., on whom the said bill of exchange is drawn; and no person at either of the said places being able to inform me where the said C. D. resides, or who would accept [*as the case may be*] the said bill of exchange for honour, or on account of the said C. D.; therefore, &c.

## SHIPPING FORMS.

Memorandum of charter-party.

*London,            day of            , 18 .*  
It is this day mutually agreed by and between A. B., sole owner of the good ship or vessel called

the \_\_\_\_\_, whereof \_\_\_\_\_ is master, of the burthen of \_\_\_\_\_ tons per register admeasurement, or thereabouts, now \_\_\_\_\_, and C. D. of \_\_\_\_\_, merchant; that the said ship being right, staunch, and strong, and every way fitted for the voyage, shall, with all convenient speed, set sail and proceed to \_\_\_\_\_, or so near thereunto as she can or may safely get, and there load from the factors or agents of the said C. D., a full and complete cargo of \_\_\_\_\_, not exceeding what she can reasonably stow and carry over and above her tackle, apparel, provisions, and furniture; and being so loaded, shall therewith proceed to \_\_\_\_\_, or so near thereunto as she can or may safely get, and deliver the same, according to the custom of the port, on being paid freight \_\_\_\_\_, with port charges and pilotage as customary, (the act of God, the Queen's enemies, restraint of princes and rulers, fire, and all and every other the dangers and accidents of the seas, rivers, and navigation of whatever nature or kind soever, during the said voyage, always excepted.) The freight to be paid on unloading, and right and true delivery of the cargo, \_\_\_\_\_ running days are to be allowed the said merchant (if the ship is not sooner dispatched) for loading the said ship at \_\_\_\_\_, and \_\_\_\_\_ days on demurrage, over and above the said laying days, at L. \_\_\_\_\_ per day. Penalty for non-performance of this agreement \_\_\_\_\_.

This charter-party of affreightment, indented, made, and concluded, in \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, between A. B., of, &c., managing-owner of the good ship or vessel called the \_\_\_\_\_, of the burthen of \_\_\_\_\_ tons, register, admeasurement, or thereabouts, now lying in the port of \_\_\_\_\_, and whereof C. D. is at present master, the said A. B. acting on his own part, and on the part and behalf of the other owner of the said ship of the one part, and E. F., of, &c., merchant, co-partner in and acting for and on the behalf of his house, trading in \_\_\_\_\_, under the firm

Charter-party to carry goods to a port abroad.

And to freight  
let, or, and let  
to hire.

of F. and G., freighter of the said ship or vessel, of the other part. Witnesseth, that the said owner, for the considerations hereinafter mentioned, doth hereby grant, and to freight let unto the said freighter, and the said freighter hath taken and hired the said ship or vessel for the voyage hereinafter mentioned, upon the terms and conditions following; (that is to say,) the said owner for himself, his executors and administrators, doth hereby covenant, promise, and agree, to and with the said freighter, his executors, administrators, and assigns, that the said ship or vessel, being tight, staunch, and substantial, and every way properly fitted, victualled, tackled, apparelled, and manned for such a vessel and the intended voyage, the said master, or some other proper person in his stead, shall and will immediately receive, take, and load on board the said ship or vessel in the said port of \_\_\_\_\_ from the said freighter, or his agents or assigns, all such quantities of lawful goods and merchandise as he or they shall or may think fit to load on board of her, not exceeding, in the whole, what the said ship or vessel can reasonably and conveniently stow and carry, over and above her stores, tackle, apparel, provisions, and furniture; and for which said goods and merchandise the said master, if required, shall sign bills of lading; and after having received and taken the same on board, and being dispatched, he shall and will (wind and weather permitting) set sail and proceed therewith direct to \_\_\_\_\_, where being arrived, or so near thereunto as she can safely get, and ready to unload, the said master, or some other proper person as aforesaid, shall and will give immediate notice thereof, in writing, to the agents or assigns of the said freighter, and shall and will make a right and true delivery of all such goods and merchandise as may be consigned to that place, agreeably to the bills of lading that may be signed for the same. And upon such right and true delivery, the said intended voyage to end, (the act of God, the Queen's enemies, restraint of

princes and rulers, fire, and all and every the dangers, casualties, and accidents of the seas, rivers, and navigation, of what nature or kind soever, always excepted.) And the said owner doth hereby further covenant, promise, and agree, to and with the said freighter, to allow for the purposes of loading the ship or vessel in the port of                   aforesaid running days; and that the said ship or vessel shall and will, if required, lay at her destined port of discharge for the delivery of the said cargo the space or time of                   running days, such lay-days to commence and be computed from the day the said ship or vessel shall arrive there, and be ready to deliver the said goods and merchandise, and notice thereof be given in writing to the agents or assigns of the said freight. And the said owner doth hereby also agree, covenant, promise, and agree, to and with the said freighter, that the boats and crew of the said ship or vessel shall and will give the usual assistance in loading and unloading her whenever it can be done with safety to the said ship; and that not any goods or merchandise whatsoever shall be received on board the said ship or vessel, in or during her said intended voyage, except only such goods or merchandise as shall be sent by the said freighter or his order on board thereof as aforesaid. In consideration whereof, and of every thing above mentioned, the said freighter doth hereby for himself, his executors, and administrators, covenant, promise, and agree, to and with the said owner, his executors, administrators, and assigns, that he, the said freighter, his executors, administrators, agents, or assigns, some, or one of them, shall or will, at his or their own proper costs and charges, send, or cause the said goods and merchandise to be sent alongside, and receive and take the same from alongside the said ship or vessel, at the respective ports aforesaid, within the days hereinbefore limited for those purposes, or days of demurrage hereinafter granted. And also shall and will well and truly pay, or cause to be paid, unto

the said owner, his executors, administrators, or assigns, freight for the said ship, at and after the rate per ton, reckoning the ton as hereinafter mentioned; that is to say, in full for freight, primage, and port charges of the said intended goods, such freight to be paid as follow; that is to say, and the said owner doth hereby further covenant, promise, and agree, that it shall and may be lawful to and for the said freighter, his agents or assigns, to keep the said ship or vessel on demurrage at her ports of loading and unloading aforesaid, the space of running days in the whole over and above the aforesaid lay-days, on payment to the said owner, his executors, administrators, agents, or assigns, of the sum of L. per ton, register admeasurement of the said ship, for each and every day that the said ship or vessel shall be so detained upon demurrage, and that the same shall be paid as it shall become due. And to the true and faithful performance of all and every the foregoing covenants, promises, and agreements, on the part and behalf of the said parties respectively, they bind themselves, their executors and administrators, (especially the said owner of the said ship or vessel, her freight and appurtenances, and the said freighter, the merchandise to be laden on board of her,) each unto the other of them firmly by these presents, in the penal sum of L. sterling money of Great Britain. In witness whereof, the said parties have hereunto interchangeably set their hands and seals the day and year first above written.

Signed, sealed, and delivered, &c.

Charter-party, whereby the owners of one moiety of a ship let their share to freight to the owners of the other moiety thereof, for a voyage to several ports.

This charter-party of affreightment, made and concluded this day of , between A. B. and C. D. of , owners of one moiety or equal half part or share of the good ship or vessel called the , of the burthen of tons or thereabouts registered admeasurement, now lying in the port of , and whereof is master, with the like moiety of all the [masts, sails,] tackle, apparel,

[boats, ordnance, furniture,] and appurtenances thereunto belonging of the one part, and E. F. and G. H. of           , owners of the other moiety and residue of the said ship, with the like moiety of all the [masts, sails,] tackle, apparel, [boats, ordnance, furniture,] and appurtenances thereunto belonging of the other part. Witnesseth, that the said A. B. and C. D. have granted and to freight let, and by these presents do grant and to freight let all the said moiety or equal half part or share of the said ship and premises unto the said E. F. and G. H. for a voyage with her, by God's permission, to be made and performed upon the terms and conditions following; that is to say, the said A. B. and C. D. for themselves, their executors and administrators, do hereby covenant, promise, and agree, to and with the said E. F. and G. H., their executors, administrators, and assigns, that the said ship being already laden, shall, with the first favourable wind and weather after the date hereof, sail direct from the said port of            to the port of            in           , where being arrived, or so near thereunto as she can safely get, and ready to unload, the said master, or some other proper person in his stead, shall give immediate notice thereof in writing to the agents or assigns of the said E. F. and G. H., there and agreeably to bills of lading, there make a right and true delivery of all such goods and merchandise as shall be directed and appointed by the said E. F. and G. H., or either of them, their, or either of their agents or assigns; and having completed such delivery, and being dispatched, the said ship shall thence set sail, and take her direct course as wind and weather shall serve, and with as much speed as may be, to           , where being arrived, and notice thereof given as aforesaid to the agents or assigns of the said E. F. and G. H., or either of them there, the said master, or some other proper person as aforesaid, shall make a right and true delivery of all such goods and merchandises as shall remain on board for and on account of the said E. F. and

And to  
freight let, or,  
and let to  
hire.

G. H. after her delivery at        as aforesaid, and shall receive and take on board such goods and merchandises as the said E. F. and G. H., or either of them, their or either of their agents or assigns shall think fit to load; that is to say, so much as the said ship can conveniently stow and carry, over and above her stores, tackle, apparel, provisions, and furniture; and having completed such delivery and loading, and being dispatched, the said ship shall, with the first fair wind and weather, set sail and proceed direct from the said port of        to        where being arrived, and notice thereof given as aforesaid, to the agents or assigns of the said E. F. and G. H., or either of them there, the said master, or some other proper person as aforesaid, shall make a right and true delivery of the whole of the said goods and merchandise agreeably to bills of lading, and such delivery being completed, and the said intended voyage, (the act of God, the Queen's enemies, restraint of princes and rulers, fire, and all and every the dangers and accidents of the seas, rivers, and navigation, of what nature or kind soever, excepted.) Also the said A. B. and C. D. hereby covenant, promise, and agree, that the said ship shall lay at her aforesaid ports of loading and delivery, (London excepted,) for the purposes of receiving on board and delivering the aforesaid cargoes, the space of running days in the whole if required, such lay-days to commence at her said loading and unloading ports respectively, from the respective days she shall be admitted to free pratique, and ready to receive or to deliver goods and merchandize, and notice thereof given to the agents or assigns of the said E. F. and G. H., and cease on her being dispatched by the said agents or assigns. Also, the said A. B. and C. D. hereby covenant, promise, and agree, that the boats and crew of the said ship shall and will assist in loading and unloading her, whenever it can be done with safety to the said ship. And that, in and during the said voyages, not any goods or merchan-

dise, nor any packets, papers, letters, or parcels whatsoever, other than the goods and merchandize to be laden as aforesaid, shall be taken or received on board the said ship or vessel, without the consent of the said E. F. and G. H., or of their agents or assigns in writing for that purpose, first had and obtained; and that the said ship, for their part, shall be tight, strong, and staunch, and well and sufficiently provided and furnished with all things fitting and necessary for such a ship and the aforesaid voyage, any thing herein contained to the contrary thereof in anywise notwithstanding. In consideration of which premises, the said E. F. and G. H. for themselves, and either of them, their or either of their executors or administrators, do covenant, promise, and agree, to and with the said A. B. and C. D., and either of them, their and either of their executors, administrators, and assigns, that they, the said E. F. and G. H., or one of them, or their or some or one of their executors, administrators, agents, or assigns, shall and will, at their own costs and charges, send the said goods and merchandise alongside, and take and receive the same from alongside the said ship, at the respective ports aforesaid, during the said voyages, within the days hereinbefore limited for those purposes or days of demurrage hereinafter granted. And also shall and will well and truly pay, or cause to be paid, to the said A. B. and C. D., or one of them, their or some or one of their executors or administrators, for every ton of such goods and merchandises as shall be laden or unladen in the said ship during the said voyages, the sum of, &c., per ton, for the part and interest of the said A. B. and C. D. in the said ship, and for and in respect of the freight and hire of their part of her, which said sum is to be paid in manner and form following; that is to say, . . . Moreover, it is hereby agreed, that it shall and may be lawful to and for the said E. F. and G. H., or one of them, or their or some or one of their executors, administrators,



agents, or assigns, to keep the said vessel in demurrage at her ports, or places of loading and unloading aforesaid, the space of                      running days in the whole, over and above the aforesaid lay-days, on paying to the said A. B. and C. D., or one of them, their or some or one of their executors or administrators, the sum of L.                      per ton, upon the registered admeasurement of the said ship, for each and every month the said ship shall be so detained upon demurrage, and so in proportion for a less time than a month; and that the same shall be paid monthly as it shall become due. And to the true performance of all and every the foregoing covenants, promises, and agreements, on the part and behalf of the said parties respectively, they bind themselves, their executors, and administrators, (especially the said A. B. and C. D., their part of the said vessel, her freight, and appurtenances, and the said E. F. and G. H. the merchandise to be laden on board her,) each unto the other of them in the penal sum of                      firmly by these presents. In witness, &c.

Condition of  
a bottomry  
bond.

Whereas the good ship or vessel, called the                      of the burthen of                      tons, or thereabouts, now lying in the port of                      and whereof                      is master, is bound out and forthwith to depart on a voyage to                      and thence to                      there to end her said intended voyage. And whereas the owners of                      parts of the said ship have not paid and furnished their respective proportions of the charges for fitting out the said ship for the said intended voyage, and thereupon the said master is necessitated to take up money for supplying and fitting out the said                      parts of the said ship for her said intended voyage; to which said voyage and employment the major part of the owners of the said ship have consented and agreed, &c. And whereas A. B. has advanced and lent unto the said master the sum of                      pounds of lawful, &c., to enable him to prosecute the said intended voyage, and is contented and hath agreed to stand to, and bear the ha-

zard and adventure thereof on the hull or body of the said ship, during the said intended voyage, so as the period thereof do not exceed                      calendar months, from                      to be accounted. Now, the condition, &c., is such, that, if the said ship or vessel do and shall, with all convenient speed, proceed and sail from and out of                      on her said intended voyage to                      , and that without deviation, (the dangers and casualties of the seas excepted,) and also if the above bounden                      his executors or administrators, do and shall, within                      days next after the arrival of the said ship or vessel in from her said intended voyage, or at the end and expiration of                      calendar months, to be accounted as aforesaid, which of the said terms shall first and next happen, well and truly pay, or cause to be paid, to the above-named A. B., his executors, administrators, or assigns, the sum of L. of good and lawful, &c., together with                      of the like lawful money, for every calendar month the said ship shall be out on the said voyage, over and above                      calendar months to the expiration of                      calendar months, to be accounted as aforesaid, and so in proportion for a less time than a month ; or if, in the said voyage, and before the arrival of the said ship at                      and within the said                      calendar months, to be accounted as aforesaid, an utter loss of the said ship or vessel by fire, enemies, or any other casualty, shall unavoidably happen, to be sufficiently proved by the said                      his executors or administrators. Then, &c.

Whereas the above named                      has                      ON Condition of a  
the day of the date hereof, advanced and lent unto                      respondentia  
the above bounden                      the sum of                      bond.  
goods, merchandises, and effects of that value, laden  
or to be laden on board the ship or vessel called the  
burthen                      tons or thereabouts, now in  
the [river Thames,] and whereof                      is master.  
Now, the condition of the above written bond or  
obligation is such, that, if the said ship or vessel do

and shall, with all convenient speed, proceed and sail from and out of the said [river Thames] on a voyage to \_\_\_\_\_, and thence return to the said [river Thames,] within [thirty-six] calendar months, to be accounted from the date hereof, and that without deviation, (the dangers and casualties of the seas excepted,) and if the above bounden \_\_\_\_\_ executors, or administrators, do and shall, within the space of \_\_\_\_\_ days next, after the arrival of the said ship or vessel in the said [river Thames] from the said intended voyage, or at the end and expiration of [thirty-six] calendar months, to be accounted as aforesaid, which of the said terms shall first and next happen, well and truly pay, or cause to be paid, to the above-named \_\_\_\_\_ executors, administrators, or assigns, the sum of \_\_\_\_\_ pounds of good and lawful money of Great Britain, together with \_\_\_\_\_ pounds of the like lawful money for every calendar month the said ship shall be out on the said voyage over and above twenty calendar months, to the expiration of [thirty-six] calendar months, to be accounted as aforesaid, and so in proportion for a less time than a month. Or if, in the said voyage, and within the said [thirty-six] calendar months, to be accounted as aforesaid, an utter loss of the said ship or vessel by fire, enemies, or any other casualty, shall unavoidably happen, and the above bounden \_\_\_\_\_ executors, or administrators, do and shall, within the space of \_\_\_\_\_ calendar months next after such loss happening, well and truly pay and satisfy to the said \_\_\_\_\_ executors, administrators, or assigns, a just and proportionable average on all the goods, merchandises, and effects, which the said \_\_\_\_\_ shall carry out on board the said ship or vessel, and on all other the goods, merchandises, and effects which \_\_\_\_\_ shall or may acquire during the said voyage, and which shall not be unavoidably lost; then this obligation to be void, otherwise to remain in full force. Witness \_\_\_\_\_ hand and seal, &c.

Know all men by these presents, that I, [vendor's

Absolute bill  
of sale of a  
ship.

name and addition,] for and in consideration of the sum of L.                      of lawful money of Great Britain, to me in hand at or before the ensealing and delivery of these presents by [*purchaser's name and addition*] well and truly paid, the receipt whereof I do hereby acknowledge, and to be therewith fully satisfied, have granted, bargained, sold, assigned, and set over, and by these presents do fully, freely, and absolutely grant, bargain, sell, assign, and set over unto the said [*purchaser's name*] all that the ship or vessel called                      now lying in the port of                      , together with all and singular the masts, sails, sailyards, anchors, cables, ropes, cords, guns, gunpowder, ammunition, small arms, tackle, apparel, boats, oars, and appurtenances whatsoever, to the said ship or vessel belonging, or in anywise appertaining, which said ship or vessel has been duly registered pursuant to an act of Parliament for that purpose, and a copy of the certificate of such registry is as follows :

*Certificate of British Registry.*

This is to certify, that, in pursuance of an act passed in the fourth year of the reign of King William the Fourth, intituled, An Act for the Registry of British Vessels, [*here insert the names, occupation, and residence of the subscribing owners,*] having made and subscribed the declaration required by the said act, and having declared that                      [he or they] together with [*names,*                      , *occupations, and residence of non-subscribing owners,*] [is or are] sole owner or owners, in the proportions specified on the back hereof, of the ship or vessel called the [*ship's name*] of [*place to which the vessel belongs,*] which is of the burthen of [*number of tons,*] and whereof [*master's name*] is master, and that the said ship or vessel was [*when and where built, or condemned as prize, referring to builder's certificate, judge's certificate, or certificate of last registry, then delivered up to be cancelled,*] and [*name and employment of*

*surveying officer*] having certified to us, that the said ship or vessel has [*number*] decks, and [*number*] masts, that her length, from the fore part of the main stem, to the after part of the stern post aloft, is [*number of feet and inches,*] her breadth at the broadest part [*stating whether that be above or below the main wales*] is [*number of feet and inches,*] her [*height between decks, if more than one deck, or depth in the hold, if only one deck*] is [*number of feet and inches,*] that she is [*how rigged*] rigged with a [*standing or running*] bowsprit, is [*description of stern*] sterned, [*carvel or clincher*] built, has [*whether any or no*] gallery, and [*kind of head if any*] head; and the said subscribing owners having consented and agreed to the above description, and having caused sufficient security to be given as is required by the said act, the said ship or vessel called the [*name*] has been duly registered at the port of [*name of port.*] Certified under our hands at the custom-house, in the said port of [*name of port.*] this            day of            in the year [*words at length.*]

(Signed)

, *Collector.*

(Signed)

, *Comptroller.**Indorsed.*

Names of the several owners within mentioned.	Number of sixty-fourth shares held by each owner.
[Name . . . . .]	. . . . . Thirty-two.
[Name . . . . .]	. . . . . Sixteen.
[Name . . . . .]	. . . . . Eight.
[Name . . . . .]	. . . . . Eight.

(Signed)

, *Collector.*

(Signed)

, *Comptroller.*

To have and to hold the said ship or vessel, and all other the above bargained premises unto the said [*purchaser's name,*] his executors, administrators, and assigns, to his and their own use and uses, and as his

and their own proper goods and chattels from henceforth for ever. And I, the said [*vendor's name*,] do hereby for myself, my executors, and administrators, covenant, promise, and agree, to and with the said [*purchaser's name*,] his executors, administrators, and assigns, in manner following; that is to say, that, at the time of the ensembling and delivery hereof, I have in myself good right, full power, and lawful authority to grant, bargain, sell, assign, and set over the said hereby bargained premises unto the said [*purchaser's name*,] his executors, administrators, and assigns, in manner and form aforesaid. And that the said hereby bargained premises, and every part thereof, now are, and so from henceforth for ever shall be, remain, and continue unto the said [*purchaser's name*,] his executors, administrators, and assigns, free, and clear, and freely, and clearly acquitted and discharged of and from all former bargains, sales, gifts, grants, titles, debts, charges, and incumbrances whatsoever. And, further, that I, the said [*vendor's name*,] my executors and administrators, shall and will, from time to time, and at all times hereafter, at the requests, costs, and charges of the said [*purchaser's name*,] his executors, administrators, and assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful and reasonable act and acts, deed and deeds, devices, conveyances, and assurances in the law whatsoever, for the further, better, and more effectually conveying, assigning, and assuring the hereby bargained premises, or any part thereof, unto the said [*purchaser's name*,] his executors, administrators, or assigns, as by him, them, any, or either of them, or by his, their, any, or either of their counsel in the law, shall be reasonably devised, advised, or required. In witness whereof, I have hereunto set my hand and seal the                      day of                      in the year of our Lord 18                      .

Signed, sealed, and delivered, }  
in the presence of }

Received on the day and year first above written of the above named [*purchaser's name*] the sum of L.        being the consideration-money above mentioned. I say received.

Witness.

OBSERVATIONS ON THE OFFICE, FUNCTIONS, AND  
PRACTICE OF A NOTARY-PUBLIC.

A notary-public is a public officer of the civil and canon law, sworn, admitted, and enrolled in the Court of Faculties; and all instruments made by and before him notarially, and passed under his official seal, are called public or notarial instruments. His appointment to his office is by Faculty, granted by the Archbishop of Canterbury, who decrees, in such Faculty, "that full faith ought to be given, as well in judgment as thereout, to the instruments to be made by the notary so appointed, the oaths thereunder written having been first required of such notary, and by him taken." Notaries-public are, in several instances, necessarily created such for a restricted object only; such as to be enabled to practise as a "proctor in any ecclesiastical court, or as a secretary to a bishop, or for the purpose of holding or exercising any office or appointment, or occasionally performing any public duty or service under Government," in which instances their notarial functions are of a limited nature; but when they are admitted or created as general practitioners, and duly enrolled and certificated, they are qualified by their office to prepare conveyances of, or deeds relating to, real or personal estates; and the act 44th Geo. III., cap. 98, sec. 14, which imposes a penalty of L.50 for each offence, upon any unqualified person drawing or preparing conveyances or deeds, contains an exception in favour of sergeants-at-law, barristers, solicitors, attorneys, notaries, &c., who may have obtained regular certificates. A considerable portion of the

business of those notaries-public who practise in seaport and trading towns, and who thence become possessed of much information as to the custom and usage of merchants in general, or as it is termed the law-merchant, consists in preparing instruments and documents relating to commercial transactions, and the like, such as charter-parties, bills of sale of ships, bottomry, respondentia, and other bonds, ship and other protests, powers of attorney, certificates, affidavits, solemn declarations, &c., &c. Notaries-public are also frequently called upon to draw wills, codicils, leases, agreements, contracts, &c.; and to execute commissions or requisitions issuing out of foreign courts, &c.: They are exclusively authorized to note and protest bills; and to "make, do, act, exercise, execute, and perform," many other "acts, matters, and things:" They are extensively employed in certifying or attesting deeds, instruments, writings, facts, and circumstances, and in legalizing signatures, and hands-writing, in order to render the same authentic, both here and in foreign kingdoms; as well as in granting notarial acts—a class of documents of unbounded extent: And by the 6th Will. IV., cap. 62, they are empowered to administer or receive solemn declarations substituted in lieu of oaths, affidavits, and affirmations.

The admission of persons on the Roll of Faculties 41st Geo. III. is principally regulated by the 41st Geo. III., cap. 78, which prohibits persons not duly admitted, according to its provisions, from acting as public notaries in England. By the second section of that act, it is enacted, that after the 1st August 1801, no person shall be admitted as a notary, unless he shall have served as a clerk for seven years to a public notary or a scrivener, (according to the custom of London, such person being also a notary-public,) and unless within three months after the date of his indenture of clerkship, an affidavit of the execution hereof by himself and his master be made by one of



the subscribing witnesses, and filed according to the directions of the act.

The act subjects any person acting as a notary (except proctors, secretaries to bishops, and persons necessarily created a notary for the purpose of holding or exercising some office or service under Government, and not as general practitioners) to a penalty of L.50, unless qualified according to the provisions of the act, or in practice before its passing. And it also subjects any notary acting or permitting his name to be used, "for or on account, or for the profit or benefit" of any person not a notary, to the penalty of being struck off the roll, except as to any allowance or sums agreed to be paid to the widow or children of any deceased notary by a surviving partner.

The act of 4th Will. IV., cap. 70, enabling attorneys and proctors to be admitted notaries.

Recital of the act of 41st Geo. III., cap. 79.

Recited act limited to London, and ten miles thereof.

Attorneys may be admitted as notaries out of those limits.

The provisions of the above act being found inconvenient in places distant from London, an act was passed in the fourth year of the reign of his late Majesty Will. IV., cap. 70, for admitting attorneys, solicitors, and proctors, beyond the limits of ten miles from London, entitled, "An act to alter and amend an act of the 41st year of his Majesty King George the Third, for the better regulation of public notaries in England;" whereby, after reciting the act of the 41st George the Third, it was enacted, "That so much of that act as required that persons to be admitted notaries-public shall have served a clerkship or apprenticeship for seven years, should, so far as the same affected persons being attorneys, solicitors, or proctors, admitted as thereafter mentioned, be limited and confined to the city of London and liberties of Westminster, the borough of Southwark, and the circuit of ten miles from the Royal Exchange in the said city of London."

And it is further enacted by section 2, "That from and after the passing of this act, it shall and may be lawful for the master of the Court of Faculties of his Grace the Lord Archbishop of Canterbury in Lon-

don, from time to time, upon being satisfied as well of the fitness of the person as of the expediency of the appointment, to appoint, admit, and cause to be sworn and enrolled in the said Court of Faculties any person or persons residing at any place distant more than ten miles from the Royal Exchange, in the said city of London, who shall have been previously admitted, sworn, and enrolled an attorney or solicitor in any of the courts at Westminster, or who shall be a proctor practising in any ecclesiastical court, to be a notary-public or notaries-public, to practise within any district in which it shall have been made to appear to the said master of the Court of Faculties that there is not (or shall not hereafter be) a sufficient number of such notaries-public admitted, or to be admitted, under the provisions of the said recited act, for the due convenience and accommodation of such district, as the said master of the Court of Faculties shall think fit, and not elsewhere; any law or usage to the contrary notwithstanding."

And it is provided and further enacted by section 3, "That nothing herein contained shall extend to authorize any notary who shall be admitted by virtue of this act to practise as a notary, or to perform or certify any notarial act whatsoever, within the said city of London, the liberties of Westminster, the borough of Southwark, or within the circuit of ten miles from the Royal Exchange in the said city of London."

Not to authorize notaries appointed thereby to act in London, or within ten miles thereof.

And it is provided and further enacted by section 4, "That if any notary, admitted by virtue of this act, shall practise as a notary, or perform or certify any notarial act whatsoever, out of the district specified and limited in and by the Faculty to be granted to him by virtue of this act, or within the city of London, the liberties of Westminster, the borough of Southwark, or the circuit of ten miles from the Royal Exchange in London aforesaid, then and in every such case it shall be lawful for the said Court

Notary admitted under this act, practising out of his district, to be struck off the roll of Faculties.

of Faculties, on complaint made in a summary way, and duly verified on oath, to cause every such notary so offending to be struck off the Roll of Faculties; and every person so struck off shall thenceforth for ever after be wholly disabled from practising as a notary, or performing or certifying any notarial act whatsoever."

## CHAPTER XXVII.

### NOTICES.

**NOTICE** is hereby given, that the partnership lately subsisting between us, A. B. and C. D., of, &c., heretofore carrying on trade under the firm of, &c., was, on the            day of, &c., dissolved by mutual consent, [and that all debts owing to the said partnership are to be received by the said C. D.; and all persons to whom the said partnership stands indebted are requested immediately to send in their respective accounts to the said C. D., in order that the same may be examined and paid.] Dated, &c.

Notice of dissolution of co-partnership.\*

Under and by virtue of the power in this behalf contained in the deed or articles establishing the partnership subsisting between you and me, bearing date on or about the            day of            18    , I hereby give you notice, that it is my inten-

From one partner to another of intention to dissolve partnership.

\* The above notice should be inserted in the London Gazette, for which purpose an affidavit of the signatures will be required to warrant the insertion. The form may be thus:—  
“E. F., of, &c., maketh oath, and saith, that he was present and did see A. B. and C. D. severally sign the notice of dissolution hereunto annexed; and that the names A. B. and C. D., set and subscribed at the foot of the said notice, are of the proper hands-writing of the said A. B. and C. D.”  
(To be sworn before a Master in Chancery.)

tion to dissolve the said partnership on the       day  
of       next. As witness my hand this       .

To Mr       (Partner.)

From part-  
ners after  
dissolution,  
to a debtor to  
pay debt to  
agent.

We hereby give you notice, that the partnership lately subsisting between us, under the firm of C. B. and C., was dissolved on the       day of       last, and we request you to pay the debt owing by you to us to Mr       , who is duly authorized to receive the same, and whose receipt shall be your sufficient discharge. As witness, &c.

To executors  
of assignment  
of a legacy.

I [we]<sup>1</sup> give you notice, that by an indenture of assignment, bearing date, &c., made, &c., the legacy of L.500, [*or my share and interest in the residuary personal estate of A. B.*] bequeathed to me, [*or the said C. D.,*] by the will of A. B., deceased, has been absolutely assigned by [me] the said C. D. to [me] the said E. F., in consideration of the sum of L.       , by, &c., to, &c., paid. [*And I, the said C. D., authorize you to pay the same to the said E. F., when the same shall become payable.*] As witness, &c.

Purchaser to  
vendor, that  
his money is  
producing no  
interest.

I hereby give you notice, that the sum of L.       , the unpaid portion of the purchase-money payable by me to you under the contract between us, bearing date, &c., is now in the hands of my bankers, Messrs       , having been appropriated to a special account to my credit, and is producing no interest or advantage whatsoever; [and, therefore, I shall hold myself discharged from any obligation henceforth to pay interest for the same.] As witness, &c.

To a mort-  
gagee by the  
purchaser of  
an equity of  
redemption.

To C. D., of, &c., I do hereby give you notice, that by certain indentures, bearing date, &c., and made, &c., for the consideration therein mentioned, the equity of redemption of, and in certain premises situate at       , and comprised in an indenture dated the, &c., and made between, &c., purporting to

<sup>1</sup> This notice is usually given by the assignee alone, but it is more satisfactory to the executors that the assignor should give it. The concurrence of both is the preferable course.

be a mortgage thereof to you, for securing the payment of the sum of L.                      and interest, were conveyed and assured to me and my heirs and assigns for ever. Dated, &c.

To, &c. I hereby give you notice, that, by indenture, dated, &c., the premises comprised in an indenture of mortgage, bearing date, &c., and made between, &c., purporting to be a mortgage by you of the same premises for securing the payment of the sum of L.                      , and interest, have in consideration, &c., been assigned (or conveyed, if in fee) to me, my heirs, [executors, administrators,] and assigns. Dated, &c.

To the mortgagor of the assignment of a mortgage.

To Mr A. B. I hereby give you notice, that I shall, at the expiration of six calendar months from the service hereof upon you, pay off the principal sum of L.                      , now due and owing to you from me, and secured by mortgage of certain premises situate, &c.; and all interest that will be then due upon the same sum; and that at such time I shall tender you a reconveyance to me of the said premises, pursuant to a draft to be previously submitted to you or your solicitor, for approval. Dated, &c.

To a mortgagee by the mortgagor of intention to pay in the mortgage-money, and of tender of reconveyance.

I do hereby<sup>k</sup> give you notice, and request that you will pay me on the                      day of                      next, at, &c., the principal sum of L.                      , together with all interest that may then be due thereon, and which is secured to [me] by certain indentures, &c.; and in case you shall make default in payment of the same on the said                      day of                      , I shall immediately thereupon proceed to a sale of the [messuage and hereditaments] in the said indentures comprised in execution of the power thereby vested in me. As witness, &c.

To mortgagor by mortgagee to pay principal and interest, and of a sale.

I hereby give you notice, that by indentures of lease and release, bearing date respectively on or about the                      and                      days of                      , made between

From mortgagee to tenant to pay rent to him.

<sup>k</sup> If by the personal representatives, add, "as the executor (or administrator) of deceased."

[mortgagor,] of , of the one part, and me, the undersigned [mortgagee,] of the other part, the messuage in your occupation was conveyed by the said [mortgagor] to me, my heirs and assigns for ever, by way of mortgage for securing L.500 and interest, and the same is now absolutely vested in me by virtue of the same indentures. And I require you to pay to me all arrears of rent now due, and the rent hereafter to become due in respect of the said premises. As witness my hand, this                      day of  
18 .

(Signed) , [Mortgagee.]

To Mr (Tenant.)

From receiver  
in mortgage-  
deed to ten-  
ant.

I hereby give you notice, that by indenture of release, bearing date the                      day of                      last, made between [mortgagor,] of , of the first part, [mortgagee,] of , of the second part, and me, the undersigned, [receiver,] of the third part, and the indenture of lease whereon the same was grounded, the messuage and piece of ground situate in the parish of                      in the county of                      in your occupation, were, with other hereditaments, conveyed and assured by the said [mortgagor] into and to the use of the said [mortgagee,] his heirs and assigns for ever, [for securing the sum of L.                      and interest:] and by the same indenture, full power and authority was given to me as the agent and receiver of the said [mortgagee,] to receive the rents thereof, and to give effectual discharges for the same. And I accordingly require you to pay me the rent now due, and hereafter to become due, from you in respect of the said premises accordingly. As witness my hand, this                      day of                      .

(Signed) [Receiver.]

To Mr (Tenant.)

From second  
to first mort-  
gagee.

I hereby give you notice, that by indenture of under-lease, bearing date on or about the                      day of                      , made between [mortgagor] of the one part, me, the undersigned [mortgagee,] of the other part, the several messuages and pieces of ground si-

tuale in , now in mortgage to you, were demised to me by the said [mortgagor] for the residue of the term of ninety-nine years, for which he holds the same, except the last day of the said term, for securing the sum of L. and interest. As witness my hand, this day of .

To Mr [Second Mortgagee.]

I, A. B., [owner, or agent to the owner,] hereby give you notice, that unless peaceable possession of the tenement [shortly describing it] situate , which was held of me, or of the said [as the case may be,] under a tenancy from year to year, [or as the case may be,] which expired, or was determined by notice from the said , [or otherwise as the case may be,] on the day of

\*Of application to justices to recover possession of a tenement under 1st and 2d Vict., cap. 74.

, and which tenement is now held over and detained from the said be given to [the owner or agent,] on or before the expiration of seven clear days from the service of this notice, I, , shall on next, the day of , at of the clock of the same day at , apply to her Majesty's justices of the peace acting for the district of , [being the district division or place in which the said tenement, or any part thereof, is situate,] in petty sessions assembled, to issue their warrant, directing the constables of the said district to enter and take possession of the said tenement, and to eject any persons therefrom. Dated this

To Mr (Signed) [Owner or Agent.]

To E. F., Esq., one of her Majesty's justices of the peace in and for the county of S.

Of action to a Justice.

I, A. B., of, &c., do hereby, according to the form of the statute in such case made and provided, give you notice that I shall, by my attorney, Mr C. D., of, &c., at or soon after the expiration of one calendar month from the time of your being served with this notice, cause a writ of summons to be sued out of her Majesty's court of, &c., against you at my suit,



and proceed thereon, according to law; for that you, the said E. F., [*state the grievance,*] and other wrongs to me *did*, to my great damage of L. , and against the peace of our lady the now Queen. Dated, &c.

This notice may be given by the attorney, or his agent, beginning, "*as the attorney,*" &c., and in *every case* should be indorsed by the attorney thus, [G. H., of, &c., "*attorney for the within-named A. B.*"]

Of action to  
an excise or  
custom-house  
officer.

To A. B. and C. D., officers of her Majesty's Excise (or Customs.)

I do hereby, as the attorney (or *agent*) of and for E. F., of, &c., according to the form of the statute in such case made and provided, give you notice that I shall, at or soon after the expiration of one calendar month from the time of your being served with this notice, cause a writ of summons, [*as in the preceding notice.*]

From landlord  
to quit.

I do hereby<sup>1</sup> give you notice to quit and deliver up to me, on the<sup>m</sup> day of next, or at such other time next after the same, as the current

<sup>1</sup> If by an attorney or agent, say, "as the attorney (or agent) of A. B., of, &c., your landlord, &c., to quit and deliver up, on, &c., the possession, &c., which you rent, &c., under him."

<sup>m</sup> A tenancy from year to year can be terminated only at the same time of the year as that on which it commenced, and each party is entitled to six calendar months' notice of the intention of the other to determine the tenancy. (See *Wright v. Derby*, Term Rep. 162, and cases there referred to, and see 2 Camp. 78, and 3 ib. 510.)

A tenancy from year to year is a chattel interest, and vests on the tenant's death in his personal representative, who will be entitled to receive, and bound to give, the same notice as the deceased whom he represents; *Doe v. Porter*, 3 T. R. 13, and 6 T. R. 298. A parol notice is sufficient, unless the agreement requires it to be in writing, (per Lord Ellenborough, C. J., in *Doe v. Crick*, 5 Esp. N. P. C., 197;) but it is advisable to give a written notice signed, but not attested, 2 Camp. 96.

year of your tenancy may expire, the peaceable possession of all that messuage or tenement, farm, lands, hereditaments, and premises, with the appurtenances, which you now rent of or hold under me, situate in the parish of                      in the county of                      .  
Dated this, &c.

I do hereby give you notice to quit and deliver up to me, or to such other person as I shall appoint to receive the same, at the expiration of the current year of your tenancy, which shall expire next after the end of one half year from and after your being served with this notice, the possession of, &c., which you rent of, or hold under me. Dated, &c.

Notice to quit, where the time of commencement of tenancy is uncertain.\*

I do hereby give you notice, and require you to quit and deliver up, on the                      day of                      next,

Notice to quit, or pay double.†

\* In cases where the commencement of the tenancy cannot be ascertained, the times of payment of the rent will be *prima facie* evidence of the commencement of the tenancy; (*Doe v. Samuel*, 5 Esp. N. P. C. 174; *Doe v. Biggs*, 2 Taunt. 109; *Doe v. Foster*, 13 East, 405; *Doe v. Wombwell*, 2 Camp. N. P., 559; and *Thomas v. Thomas*, ib. 647.) Where the tenant informs his lessor of the time of the commencement of the tenancy, he will be bound by a notice given by the lessor, according to such statement, although unintentionally wrong; (*Doe v. Lambley*, 2 Esp. N. P. 635.) When the commencement of the tenancy is not known, a notice requiring the tenant to quit at the expiration of the current year of the tenancy, which shall expire next after the end of half a year from the service of the notice, will be sufficient; (*Doe v. Butler*, 2 Esp. N. P. 589.) But it is advisable, in such a case, not to bring an ejectment before the expiration of a year and a quarter from the service of the notice, in order to be certain that the year of the tenancy has expired.

Where the commencement of the tenancy is uncertain.

† By 4th Geo. II., cap. 28, sec. 1, it is enacted, that if any tenant for life or years, or other person who shall come into possession by, from, or under, or by collusion with him, shall wilfully hold over any lands after the determination of such term, and after *demand made*, and notice in writing given, for delivering the possession thereof, he shall, for the time that he shall so hold over, pay at the rate of *double the yearly value* thereof, to be recovered by action of debt in any court

As to holding over, after the determination of the term.

the possession of the messuage or dwelling-house, farm-lands, hereditaments, and premises, with the appurtenances, situate in the several parishes of, &c., which you now rent of, or hold under me; and in default thereof, I do hereby give you notice that you are to pay to me double the yearly value of the said messuage or dwelling-house, farm-lands, hereditaments, and premises, from the said day of , so long as you continue to hold over the same, according to the form of the statute in that case made and provided. Dated, &c.

Notice from  
tenant to  
landlord of  
intention to  
quit.\*

I do hereby give you notice, that I shall quit and deliver up to you, or such other person as you may appoint to receive the same, on the day of , which will be in the year of our Lord 18 , being the end of my present year's tenancy, the possession of all that messuage or dwelling-house, with the

of record. *It has been decided, that the notice to quit under this act may be given either before or after the determination of the term, but when the notice is given after, the landlord will be entitled to double rent from the time of giving notice only; (Cutting v. Derby, 2 Blac. Rep. 1075; Cobb v. Stoker, 8 East, 358.)*

Notice to quit is a sufficient demand within this act; (Wilkinson v. Colley, 5 Burr. 2694.)

A tenant for a less term than a year was held not within the statute; (Lloyd v. Rosbee, 2 Camp. N. P. C. 453.)

As to letting  
from different  
periods.

When the tenant enters upon different parts of the premises at different periods, without any agreement as to the time when the whole is to be considered as let together, the commencement of the year, with reference to the notice to quit, will be computed from the entry on that part which is considered as the substantial or principal object of the demise: (Doe v. Spence, 6 East, 120; Doe v. Watkins, 7 ib. 551;) and which is a fact for the determination of the jury; (Doe v. Howard, 11 East, 498.)

Terms of  
holding by  
the repre-  
sentative of  
lessor or  
lessee.

\* The tenancy, till determined, will subsist as between the assignees and representatives of the landlord and tenant, upon the same terms as between the original parties to the demise, and governed by the same rules as to determination.

lands, hereditaments, and premises thereto belonging, with the appurtenances, which I now rent of or hold under you, situate in B. or elsewhere, in the county of S. As witness my hand, this       day of 18 .

I do hereby give you notice to quit and deliver up, on or before the       day of       next, the apartments and other tenements you now hold of me in this house. Witness my hand, this       day of 18 . [Witness.]

Notice to quit apartments.

Take notice, that on the       day of       next, I shall quit and deliver up the apartments and tenements I now hold of you in this house. Witness my hand, this       day of 18 .

Notice from tenant to landlord to quit apartments.

Whereas, by virtue of a certain indenture of lease, dated and made between you, the said A. B., of the one part, and me, the undersigned C. D., of the other part, the messuage and dwelling-house, farm-lands, and premises, situate in, &c., now in my occupation, were demised and leased to me by you, for a term of fourteen years, under the yearly rent of L. , and in such indenture of lease is contained a proviso that, &c., [state the proviso giving tenant option to quit and make void the lease, on giving six months' notice, at the end of seven years, or as the case may be.] Now I, the said C. D., under and in pursuance of the power reserved and given to me, in and by the

Notice from tenant to landlord of his intention of quitting, pursuant to proviso in the lease enabling him so to do, at a certain period.

\* The notice required in the case of lodgings depends either upon the agreement between the parties, or the particular circumstances of the case, as the length of time for which they are taken, &c. If for less than a year certain, any reasonable notice is held to be sufficient; (*Wright v. Derby*, 1 Term Rep. 163.) But it is generally understood that a week's notice shall be given, if the apartments are taken by the week; a month's notice, if taken by the month; and a quarter's notice, if taken by the quarter. But if lodgings are taken for a week or month, or any other time certain, no notice at all is expected; *Doe v. Hazell*, 1 Esp. 94; *Doe v. Scott*, 4 Moore and P. 20; 6 Bing. 362; *Wilson v. Abbot*, 3 B. and C. 89. Notice as to lodgings.

aforesaid proviso or condition, do hereby give you notice, that it is my intention to avoid the said recited indenture of lease at the end of the first seven years of the said term of        years thereby granted, and that I shall, at the expiration of such seven years, quit and deliver up the possession of the said premises accordingly. As witness my hand, this day of        18 .<sup>a</sup>

Notice to  
tenant to re-  
pair premises.

I do hereby give you notice, and require you to put in good and tenantable order, and repair all and singular the houses and premises which you now rent of, or hold under me, situate, &c., particularly, &c., [*stating such place as wants repairing in particular, as the case may be.*] As witness my hand, &c.

To the churchwardens and overseers of the poor of the parish of A., in the county of S.

Notice of ap-  
peal against  
a poor-rate.\*

This is to give notice to you, and each and every of you, that I, the undersigned C. H., an inhabitant

As to tenant's  
not quitting  
when notice  
given under a  
power in the  
lease.

<sup>a</sup> By the 11th Geo. II., cap. 19, sec. 18, after reciting that great inconvenience had happened to landlords whose tenants had power to determine their leases by giving notice to quit the premises, and yet refusing to deliver up the possession when the landlord had agreed with another tenant for the same; it was enacted, that if any tenant should give notice of his intention to quit the premises at a time mentioned in such notice, and should not accordingly deliver up the possession at the time in such notice contained, he, his executors, or administrators, should from thenceforward pay *double rent* during all the time he should so continue in possession, to be recovered in like manner as the single rent.

As this statute directs the double rent to be recovered in the same manner as the single rent, the landlord may maintain either debt or assumpsit or distrain; (*Timmins v. Rawlinson*, 3 Burr. 1603.) This notice need not be in writing, *id.*

\* By 17th Geo. II., c. 38, if any person shall be aggrieved by any assessment, or shall have any material objection to any person being put in or left out of such assessment, or to the sum charged on any person or persons therein, he may, giving reasonable notice to the churchwardens or overseers, appeal to the next sessions for the county, riding,

and occupier of lands and tenements in the parish of H., in the said county of S., do intend, at the next general quarter sessions of the peace, to be holden in and for the said county of S., to commence and prosecute an appeal against the last assessment or rate made for the relief of the poor of the said parish of A., for that [*or say*, "the grounds of my appeal are, that," &c.] the assessment or rate made for the relief of the poor of the said parish of A. is partial, unfair, unequal, and unjust, for that you have left out and omitted in the said rate or assessment the names of, &c., inhabitants and occupiers of lands and tenements in the said parish of A., and neglected to charge, rate, and assess them, or any of them, for the several messuages, lands, and premises, in their respective possessions or occupations, in the said parish of A., at the time of making the said rate or assessment, and for some time before. And also

division, corporation, or franchise; but if reasonable notice be not given, then they shall adjourn the appeal to the next quarter session after; provided that in all corporations or franchises not having four justices, the appeal may be to the next general or quarter session for the county, riding, or division, wherein such corporation or franchise is situate. And on appeals from rates the justices shall amend the same in such manner only as shall be necessary for giving relief, without altering such rates with respect to other persons mentioned in the same; but if, upon an appeal from the whole rate, it shall be found necessary to set the same aside, then they shall order a new rate to be made, and they may award reasonable costs on either side. By 41st Geo. III., c. 23, all notices of appeal must be served in writing, and served upon two or more of the churchwardens and overseers, such notice to specify the particular grounds of appeal; and no other ground, unless by consent of the parties, to be gone into.

The appeal lies to the next session after allowance, *King v. Atkins*, (4 T. R. 12;) for it is no rate till it has been allowed. A notice of appeal, when it is on account of particular persons being omitted, &c., must specify those particular persons by name. (1 Bott. 274.)

that, in the said rate or assessment, you have greatly underrated A. B., C. D., and E. F., for the several messuages, lands, and premises, in their respective possessions or occupations; and because I am not rated fairly and equally, but more in proportion than the several last-mentioned persons respectively are, or ought to have been rated, in respect of the messuages, lands, and premises, in their respective possessions, within the said parish of A.; and because, &c., are overrated in respect of the messuages, lands, and premises, in their respective possessions, within the said parish of A.: And I do hereby also give you notice to produce, at the hearing of the said appeal, the aforesaid rate or assessment, and to prove the due making, signing, allowance, and publication thereof. As witness my hand, this                      day of

18 .

To A. B. and C. D., Esquires, two of her Majesty's justices of the peace for the county of, &c.

Notice of trying traverse, upon a presentment of road being out of repair.

I do hereby give you, and each of you, notice, that the inhabitants of the poor of the parish of C., in the said county of D., do intend, at the next general quarter sessions of the peace, to be holden at the shire-hall in, &c., in and for the said county, on, &c., next, to appear, and try their traverse with effect, upon a presentment made by you upon a certain part of the highway leading from T. to M., commencing at the confines of the parish of B., and extending, &c., containing in length, &c., and in breadth, &c., [*as in presentment, &c.*] Dated, &c.

Witness, L. M.

E. F.

Surveyor of the highway  
of the said parish of C.

To A. B. and C. D., two of her Majesty's justices of the county of, &c.

Notice of intention to move by

I do hereby give you, and each of you, notice, that I intend, at the next general quarter sessions of the peace to be held in and for the county of

to move by counsel to set aside or withdraw a presentment by you preferred against the inhabitants of the parish of M., in the said county of S., commencing, &c., which said road hath lately been well and substantially repaired.<sup>o</sup> And I do further give you, and each of you, notice, that the said road will be viewed on the day of next, at o'clock in the forenoon, by two of her Majesty's justices of the peace, acting in and for the county of , who will attend for that purpose,<sup>p</sup> at the house of, &c., in the parish of afore-said, on the day and at the hour last before mentioned, when and where you may attend, if you

counsel, at sessions, to withdraw a presentment of a road being out of repair; and notice that same will be viewed by two justices.

<sup>o</sup> There must be an affidavit made by one of the witnesses to the notice, to be sworn in court, stating that the deponent did see the justices sign their names to the certificate thereunto annexed, and that the names of them and the witnesses are their proper hand-writing. There should also be an affidavit by one of the surveyors of the highways for the parish, stating that the roads were presented at certain sessions, for not repairing, &c., and that it appears from the accounts of the surveyors of the parish, from the time of preferring the presentment to the present time, that the sum of, &c., [specify the amount] has been laid out and expended in repairing of the road by the inhabitants of the parish, and that the whole under presentment is repaired and amended, and likely to continue so.

<sup>p</sup> To C. C., Esquire, and other her Majesty's justices of the peace for the county of S., at the general quarter sessions of the peace held at S., in and for the said county, on, &c.

We, A. B. and C. D., two of her Majesty's justices of the peace in and for the said county of S., do hereby certify that we have this day viewed a certain ancient highway, in the parish of M., in the county of S., leading, &c., commencing, &c., containing, &c., now under presentment as afore-said, and that the same is now in good and sufficient repair, and likely so to continue. Witness our hands, this day of 18 .

Certificate by magistrates of having viewed a highway which has been repaired.

A. B.  
C. D.

Signed in the presence of, &c.



please. As witness my hand, the day of 18 .  
E. F.

Witness. Surveyor of that part of the  
high road, in the parish of  
M., which is presented.

Notice to pre-  
vent sporting.

I do hereby give you notice, not at any time here-  
after to enter or come upon any part of the farms,  
lands, woods, hereditaments, and premises, in my  
possession or occupation, situate, &c., or any or  
either of them, either for the purpose of coursing,  
hunting, shooting, fishing, or fowling, or any pre-  
tence whatsoever; as I shall deem every such entry  
and intrusion a wilful trespass done to me, and shall  
take my remedy for the same according to law.  
Dated this day of 18 .  
To the churchwardens and overseers of the poor of  
the parish of in the county of, &c.

Notice of ap-  
peal against  
an order of  
removal.\*

We, the churchwardens and overseers of the poor  
of the parish of, &c., do hereby give you, and each  
of you, notice, that we intend to commence and pro-  
secute an appeal at the next general quarter sessions  
of the peace, to be held in and for the county of  
against an order of A. B. and C. D., Esquires, two of  
her Majesty's justices of the peace for the county of  
aforesaid, touching the removal of, &c., [as  
in the order;] and the grounds of such intended ap-

\* An affidavit of the service of the notices should be pre-  
pared, to be sworn in court.

\* By the statute 4th and 5th William IV., c. 76, § 81, the  
grounds of the appeal must be stated in the notice, or by a  
separate document, and no other grounds can be gone into.  
This notice must be signed by the majority of the church-  
wardens and overseers, and must be given fourteen days at  
least before the first day of the sessions. The parish giving  
the notice is not bound by it, if, before the fourteen days,  
another notice, stating the grounds upon which the parish  
intends to rely, be given. *Rex v. Derbyshire*, 6 Ad. and  
El. 612, n.

peal are, that, &c., [setting forth the grounds.]  
Dated, &c.

*Churchwardens.*  
*Overseers.*

To Mr A. B.

I do hereby give you notice, that under and by virtue of a certain indenture, dated, &c., and made between, &c., in consideration of, &c., a certain bond, dated, &c., under your hand and seal, &c., in, &c., with a condition, &c., (or other chose in action,) was assigned to me, my executors, administrators, and assigns, and on which said bond there was then due to the said (*obligee*) the sum of, &c., with interest from, &c., and in which said indenture is contained a power of attorney, enabling me to enforce the payment of the said principal sum and interest to become due, for and in the name of him, the said, &c., but to and for my own use and benefit. Dated, &c.

## CHAPTER XXVIII.

### PARISH PROPERTY.

THE 43d Elizabeth, c. 2, sec. 5, authorizes the churchwardens and overseers of any parish, with the leave of the lords of the manor, and upon an agreement with them in writing, according to an order of the justices of the quarter sessions, to build upon the waste lands in their parish convenient dwellings, for the habitation of the impotent poor, which houses were to be used for their habitation only.

The 9th George I., c. 7, sec. 4, empowered the churchwardens and overseers, with the consent of the vestry, to purchase or hire any house or houses in the same parish, for a cottage or cottages, but gave no directions how such property was to be held.

The 59th George III., c. 12, gave additional powers for the purchasing and building of cottages, and enacted, that the churchwardens and overseers should be a corporation to take and hold all buildings, lands, and hereditaments, purchased, hired, or taken, or used by them, for the purposes of that act, and also all other buildings, lands, and hereditaments belonging to such parish.

Section 9 of that act empowers the churchwardens and overseers of the poor, by the direction of the

vestry, and with the consent of two justices to sell and dispose of any cottages, or any other houses or tenements belonging to such parish. See also 1st and 2d George IV., c. 56.

All property held by trustees on behalf of the parish thus became vested in the churchwardens and overseers of the parish for the time being.

The 4th and 5th William IV., c. 76, sec. 21, enacts that all the houses given by any act relative to the acquiring, purchasing, hiring, holding, selling, exchanging, and disposing of cottages, shall be exercised by the persons authorized by law to exercise the same, under the control and subject to the rules, orders, and regulations of the poor-law commissioners.

The 5th and 6th William IV., c. 69, sec. 3, extended to copyhold lands by the 1st Victoria, c. 50, contains the following enactment, namely, "That it shall be lawful for the guardians of any parish or union, and for the overseers of any parish, not under the management of a board of guardians, and for the guardians or trustees, guardian or trustee, of any dissolved union, or the person or persons who were the guardians or trustees, guardian or trustee, of any dissolved union at the time of its dissolution, or a majority of such guardians, trustees, or persons, if more than one, with the approbation and subject to the rules, orders, and regulations of the poor-law commissioners, to sell, exchange, let, or otherwise dispose of any workhouses, tenements, buildings, land, effects, or other property belonging to any such parish or union, or vested in trustees, or feoffees, in trust, for such parish or union, or for the parishioners, rate-payers, or inhabitants thereof, or which belong, or did belong, to any dissolved union, and every and any part of such property, and to convey, assign, or transfer the same accordingly to the purchasers or parties exchanging, as they shall direct; and in case of a sale to apply the produce arising therefrom (after deducting the reasonable expenses thereof) towards the purchase or building of any workhouse,

or as or in part of the proportion of such parish or union, towards the expense of any workhouse, erected, purchased, or provided on behalf of such parish or union, or as a loan to the board of guardians of such union, upon the security of the rates, for the purpose of erecting a workhouse, or in liquidation of any debt contracted by such parish or union, or dissolved union, or in such other manner for the permanent advantage of such parish or union, or dissolved union, as the said poor-law commissioners may approve; and in case of an exchange, the hereditaments to be taken in exchange shall be conveyed to the guardians of such parish or union, or the overseers of such parish, upon the same trusts, and the rents and profits thereof shall be applied to the same purposes as the hereditaments given in exchange were held, and the rents and profits thereof would have been applicable under the provisions of the law, or of this act, if the same hereditaments had not been exchanged." And by the same section, after giving certain powers to the poor-law commissioners as to the application of the rents of such property, it is provided, "That no such sale, or exchange, or letting of any workhouses, tenements, buildings, or land of any parish, shall take place, except with the consent of a majority of the rate-payers of such parish, and of the owners of property therein, entitled to vote, under and by virtue of the act passed in the fourth and fifth years of the reign of his present Majesty, intituled, *An act for the amendment and better administration of the laws relating to the poor in England and Wales*, assembled at a meeting, to be duly convened and held for the purpose, after public notice of the time, and place, and purpose, of holding such meeting shall have been given, in like manner as notices of vestry meetings are published and given, such majority to be ascertained in manner provided by the said act."

The poor-law commissioners have settled the following course of proceeding, in selling parish property, namely, in the first instance, the parish

officers, or some of the inhabitants of the parish, present a request to the guardians in the form No. 1, given below, to apply to the poor-law commissioners for their consent to the sale. The board of guardians, if they approve of the application, make it in the form No. 2, and forward both forms to the commissioners. Upon the receipt of these forms, the commissioners investigate the title of the parish to the property, and to enable them to do so, require the title-deeds to be transmitted to them. They also send a series of questions relative to the property, to be answered by the parish officers; but where there are no deeds, and the title depends upon possession alone, a statutory declaration as to such possession must be made, according to a form which the commissioners will send. Upon the investigation being completed, the commissioners, if satisfied of the sufficiency of the title, issue an order to the churchwardens and overseers to convene a parochial meeting, that the parishioners may formally consent to the sale of the property; copies of the notice convening the vestry-meeting, and of the resolution made at it, must be sent to the commissioners, with a certificate verifying such copies,—the forms of the notice, resolution, and certificate, are given below. The resolution having been received, and its regularity proved, the commissioners issue an order for the sale of the property. With their sale order, which they send to the board of guardians, they also send a letter of instructions, conditions of sale, and the draft of a form of conveyance, which they have had prepared, of which copies are given below.

The drafts of the conveyances having been prepared by the solicitor for the purchaser, are delivered by him to the clerk of the guardians, who will forward the same to the commissioners for their approval. The draft is either approved or altered according to their judgment, and sent back by them to the clerk of the guardians, who will return it to the solicitor, from whom he received it, for engross-

ment. When the deed is engrossed, it is to be laid before the board of guardians for their execution; and the other parties having executed it, the purchaser must pay the purchase-money to the treasurer of the union, according to the directions contained in the sale order.

The deed being completely executed, is to be forwarded to the commissioners, to be registered and sealed by them. They require the deed to be perfect, and are accustomed to return the same, if there be any blanks which ought to have been filled up, or any parties have not executed it, who ought to have done so, or the attestations be not complete or sufficient. If they are satisfied, they have the deed copied on parchment, and such copy is registered by them, with other conveyances; all such copies, or office copies thereof, are made admissible in evidence, by the 5th and 6th William IV., c. 59, sec. 6.

The deed having been registered, the seal of the commissioners is affixed to it, and the conveyance is returned to the party who forwarded it.

Though the commissioners send a form of condition of sale prepared under their direction, which they expect generally to be adopted, they do not object to modify them, if any necessity for a modification is shown.

No. 1. *Request to the Guardians to apply to the Poor-Law Commissioners to consent to Sale.*

Parish of \_\_\_\_\_  
County of \_\_\_\_\_  
Union, }

We, the undersigned majority of the parish officers, and we, the undersigned inhabitants of the parish of \_\_\_\_\_ in the \_\_\_\_\_ Union, in the count of \_\_\_\_\_ request you, the guardians of the poor of the said union, to apply to the poor-law commissioners

<sup>r</sup> These references are the numbers by which the forms are marked by the commissioners.

for their consent to the sale of the undermentioned premises, belonging to the said parish, and for their directions as to such sale, and for the application of the produce thereof, to the permanent advantage of the said parish.

*[Here describe the premises accurately, but concisely ; stating whether the tenure is freehold, customary freehold, copyhold, or leasehold, and whether subject to the payment of any quit or other rent.]*

*If any buildings are proposed to be sold, and it is considered desirable that the materials should be sold separately from the site, the circumstance should be stated.*

*State also when and how the parish became possessed of the property, and the trusts, if any exist, which affect the same.*

*If the property has been built upon waste land, state whether it was so built with the consent of the lord of the manor, and the date of such consent.]*

The said premises cannot conveniently be used for the purposes of the said union, and we are of opinion that the sale thereof will be of permanent advantage to the said parish, for the following reasons :

*[Here describe their condition, whether in a state of good repair, or dilapidated ; also in whose occupation, whether in that of paupers, or not, or empty ; and any other circumstances that may enable the guardians to judge of the desirableness of selling the property.]*

The said premises are estimated to be of the value of                      and yield an annual rent of

We are also of opinion, that it will be advisable to apply the proceeds of the sale, after deducting the expenses thereof, in the following manner, to the permanent advantage of the parish :

*[Say whether as contribution to the Union Workhouse, or to what other purpose ; if to pay a debt, say when it was contracted, by whom, for what purpose, and how such debt is secured ; if to discharge a mortgage, state by whom and when created, the*



*name of the mortgagee, and to what objects the money was applied.*] Dated this       day of 184 . [To be signed by the churchwardens, overseers, and inhabitants.]

**No. 2. Request to the Poor-Law Commissioners to consent to Sale.**

The guardians of the poor of the       Union, *being fully satisfied* that the sale of the premises described in the annexed application will be of permanent advantage to the parish of       do hereby request the poor-law commissioners to consent that the said guardians may sell the said premises, under the provisions of an act passed in the sixth year of the reign of his late Majesty King William IV., intituled, "*An act to facilitate the conveyance of workhouses and other property of parishes and of incorporations or unions of parishes in England and Wales;*" and that the said commissioners will issue such rules, orders, or regulations, touching such sale, and the conveyance of the said premises, and the application of the produce thereof, for the permanent advantage of the said parish, as they may see fit in that behalf. In testimony whereof, the said guardians have hereunto affixed their common seal, this       day of       184 .

Witness, A. B., clerk to the board of guardians.



***Declaration of Possessory Title.***

A. parish. }  
B. union. }  
C. county. }

[This is to be altered according to the state of

facts to which the declarant can speak.—It should be carefully read over by or to the declarant, who should not be an illiterate person, or a marksman.—Two or more persons may join in the declaration, each speaking to the facts within his knowledge.—If there be any exception or qualification to any of the facts declared, it should be stated in the same paragraph as the fact which it affects.]

I, A. B., [*Insert the Christian and surname, and place of abode, and quality of the declarant, at full length.*] of, &c., do solemnly and sincerely declare, that I am        years of age, and that I have resided at        for        years last past. [*If the declarant believe that he was born at that place, state the fact.*] That I well know the property proposed to be sold by the guardians of the poor of the S. union, with the approbation of the poor-law commissioners, consisting of [*Describe the property in the terms used in the former papers,*] in the parish of A.

That for the whole period of        years last past, during which I have known the same, the said premises have been in the possession of the churchwardens and overseers of the poor of the said parish of A.

That the said buildings have been from time to time repaired out of the poor rates of the said parish of A. [*If the declarant have held the office of overseer, and disbursed money in repairs, state the fact. In some cases, the annexation of extracts from the parish accounts and books may conduce to establish this and the following fact.*]

That the churchwardens and overseers of the said parish have from time to time let the said premises, and placed therein such of the paupers of the said parish as they, or the parochial vestry, thought fit; and that [*If rents were received by the overseers, state the fact.*]

\* The period of possession must not be less than twenty years last.



payers in this parish, and of the owners of property therein entitled to vote in person, or (as respects owners) by proxy, pursuant to the provisions of an act passed in the fifth year of the reign of his late Majesty King William IV., intituled, "*An act for the amendment and better administration of the laws relating to the poor in England and Wales,*" will be held at            in this parish, on<sup>t</sup>            the day of            at            in the forenoon, for the purpose of giving the consent of such meeting to the guardians of the poor of the            union selling the following premises; that is to say,            under the provisions of an act passed in the sixth year of the reign of his said late Majesty, intituled, "*An act to facilitate the conveyance of workhouses and other property of parishes, and of incorporations or unions of parishes, in England and Wales,*" in such manner, and subject to such rules, orders, and regulations, touching such sale, and the conveyance of such property, and the application of the produce arising therefrom, for the permanent advantage of this parish, as the poor-law commissioners shall in that behalf direct.

Dated this            day of            184 .

[To be signed by the minister, churchwardens, and overseers.]

**No. 6. Resolution to be entered in Vestry Book.**

Parish of A.

B. Union, }

County of C.

At a meeting of the rate-payers of this parish, and owners of property therein, entitled to vote pursuant to the provisions of an act passed in the

<sup>t</sup> The meeting cannot be legally held earlier than the Thursday after the Sunday on or before which the notice is given, as three clear days must intervene between the Sunday on or before which the notice is given and the day of meeting.

The premises  
to be described  
in the margin.

5th year of the reign of his late Majesty King William IV., intituled, "*An act for the amendment and better administration of the laws relating to the poor in England and Wales*," held at \_\_\_\_\_ in the said parish, on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 184 \_\_\_\_\_, pursuant to notice of such meeting duly given.

*Chairman.*

It was resolved, by a majority of such rate-payers and owners, present in person or (as respects owners) by proxy at such meeting :—

That this meeting do consent to the guardians of the poor of the \_\_\_\_\_ union selling *the premises described in the margin hereof*, under the provisions of an act passed in the sixth year of the reign of his late Majesty King William IV., intituled, "*An act to facilitate the conveyance of workhouses and other property of parishes and of incorporations, or unions of parishes, in England and Wales*," in such manner, and subject to such rules, orders, and regulations touching such sale, the conveyance of such property, and the application of the produce arising therefrom, for the permanent advantage of this parish, as the poor-law commissioners shall in that behalf direct.

[To be signed by the minister, churchwardens, and overseers.]

No. 7. *Certificate of Minister, Churchwardens, and Overseers, of the Forms of Act having been complied with.*

Parish of S.

County of L.

L. Union, }

We, the minister, churchwardens, and overseers, of the parish of S. do hereby certify, that, at a meeting of the rate-payers of the said parish, and owners of property therein, whose claims to be entitled to vote have been duly registered in the books of the said parish, held at \_\_\_\_\_ in the said parish, on

the            day of            the resolution, of which a true copy is hereunto annexed, was duly passed. And we do further certify and declare, that such meeting was duly convened and held for the purpose expressed in such resolution, after public notice of the time and place of holding such meeting, and the purpose for which the same was intended to be held, had been given in like manner as notices of vestry meetings are given in the said parish. And we do further certify, that the paper marked (A.) hereto annexed, and signed by us, is a true copy of the notice of such meeting, and that such notice, fairly written, (or printed,) was affixed, on the day of            on the principal door of the church (or chapel) of the said parish, and that the paper hereto annexed, marked (B.) and signed by us, is a true extract from the vestry books of the said parish.

Witness our hands, this            day of            184 .

[To be signed by the minister, churchwardens, and overseers.]

#### No. 10. *Conditions of Sale.*

1. In case any purchaser shall be desirous of investigating the title, an abstract shall be prepared and furnished at his cost, and all expenses attending such investigation, or arising out of the same, or of completing the title, and the costs of procuring or making all official and other copies, or extracts, counterparts or duplicates of deeds, wills, or other documents, and of preparing, perusing, and approving deeds of covenant, and the like, shall be paid by the purchaser to the vendors, previously to, or as the same shall be incurred; and the purchaser shall not be entitled to require any further investigation or evidence, while any previous expenses of, or connected with, the investigation of the title, or the evidence, shall remain unsatisfied; nor shall the purchaser have any claim whatever for reimbursement, or be entitled to refuse or delay payment in respect of any expenses incurred in case the purchase shall

thus:—"Now the guardians, &c., in consideration, &c. And the said, &c., do, &c."

*But matter which would be implied, as the facts of the parish officers being entitled, of a sale having been ordered and effected, &c., need not be recited.*] The guardians of the poor of the Shiffnall union in the county of Salop, and A. B. and C. D., the churchwardens, and E. F. and G. H., the overseers of the poor of the parish of Shiffnall, in the said union, and in the county of Salop, [*Insert the names simply of the present churchwardens and overseers. Parish officers are not, however, necessary parties, but as the property is vested in them, they usually concur in these conveyances,*] in consideration of the sum of L.1000 sterling, paid by R. M., of, &c., to P. O., the treasurer of the said union, to be placed to the "Shiffnall parish property account," do grant and convey<sup>v</sup> all the [*Here describe the premises,*] belonging to the said parish of Shiffnall, and lately used for the reception of the poor thereof. Together with all the appurtenances thereto belonging; and all the right, title, and interest of the conveying parties, in and to the same, unto and to be holden by the said R. M., his heirs, and assigns for ever. [*If the property be leasehold, substitute the words "executors, administrators, and assigns, for all the residue of the said term of years, created by the said indenture, subject to the rent, clauses, or covenants, therein reserved and contained," for "heirs and assigns for ever."*] ["Nevertheless, to such uses upon such trusts, and for such intents and purposes as the said R. M. shall, by any deed or deeds, writing or writings, with or without a power of revocation by him, duly executed and attested from time to time, or at any time or

<sup>v</sup> If the property be leasehold, substitute the word "assign" here, for "grant and convey."

<sup>w</sup> The words between the brackets to be omitted, unless expressly required by the purchasers to be inserted.

times direct, limit, and appoint, and in default thereof, and subject thereto, to the use of the said R. M. during his life; and after the determination of that estate, by any means, in his lifetime, to the use of A. P. of            and his heirs, during the life of the said R. M. in trust for him and his assigns; and after the determination of that estate so limited to the said A. P. and his heirs, as aforesaid, to the use of the said R. M., his heirs and assigns for ever. \*And the said R. M. doth hereby declare, that his widow, if he leave any, shall not have any right to dower out of the said hereditaments.] And the said conveying parties, for themselves and their successors respectively, hereby covenant and declare, with and to the said R. M., his heirs and assigns, that they respectively have done no act to incumber or prejudicially affect the hereditaments and premises hereby conveyed. In witness whereof, the said guardians, their common seal, and the said churchwardens, and the said R. M., their hands and seals have hereunto set.

*The following will be the Indorsements on the Conveyance.*

The common seal of the guardians of the within named union was affixed to this deed at a meeting of the said guardians, held on the day of the date thereof, by T. W., Esq., the presiding chairman, by order of the board, in the presence of           . Signed, sealed, and delivered by the within named A. B., &c., in the presence of

Received on the day and year first within written, of and from the within named R. M. the sum of L.1000 within mentioned, to be paid by him to me. Witness,

C. D., treasurer of the within named union.

\* If this declaration be introduced into the conveyance, the purchaser will be required to execute the deed previous to its being registered.



*Conveyance of Copyholds.*

This deed, made the                      day of                      in the year of our Lord 184                      , by virtue of an act passed in the session held in the fifth and sixth years of the reign of his late Majesty King William IV., intituled, "*An act to facilitate the conveyance of workhouses, and other property of parishes, and of incorporations or unions of parishes, in England and Wales;*" and of another act, passed in the first year of the reign of our Sovereign Lady Victoria, intituled, "*An act to facilitate the conveyance of lands and buildings, for the purposes of two acts passed respectively in the fifth and sixth years of his late Majesty King William IV.,*" and with the approbation of the poor-law commissioners, testified by their seal being hereunto affixed:—Witnesseth, that the guardians of the poor of the                      union, in the county of S., and A. B. and C. D., churchwardens, and E. F. and G. H., overseers of the poor of the parish of Shiffnall, in the county of Salop, in consideration of the sum of L.100 sterling, paid to R. M., the treasurer of the said union, to be placed to the "Shiffnall parish property account," by G. A. M. of, &c., do grant, convey, and appoint, all their right, title, and interest, in, and P. O., of, &c., one of the copyhold or customary tenants of the manor of Shiffnall, before A. P. of, &c., the steward of the said manor, doth, out of court, as testified by this deed, signed by the steward, surrender into the hands of the lord of the said manor, by the hands and acceptance of the said steward, by the rod, according to the custom of the said manor, all that, &c., [*Here set out the premises,*] with the appurtenances thereunto belonging, unto and to be holden by the said G. A. M., his heirs and assigns, according to the custom of the said manor, and subject to the rents, fines, customs, and services, payable and to be performed to the lord or lady, lords or ladies of the

same manor, for the time being, for or in respect of the said premises, or any part thereof, to the intent that he, the said G. A. M., may be admitted thereto, to hold to him and his heirs in manner aforesaid.

In witness whereof, the said guardians have hereunto affixed their common seal, and the said A. B. and C. D., churchwardens, and E. F. and G. H., overseers, and also the said P. O., have hereunto set their hands and seals, the day and year first above written.

*The following will be the Indorsements.*

Signed, sealed, and delivered by the within-named A. B., &c., in the presence of

The common seal of the guardians of the Shiffnall union was affixed to the within deed, at a meeting of the said guardians, held on the day of the date thereof, by T. W., Esq., the chairman, in the presence of



The surrender within-mentioned to be made was taken and accepted this            day of            by me, G. H., steward of the manor of            .

Received the day and year first within-written, from the within-named            the sum of            being the consideration-money within-mentioned, to be paid by him to me.

Witness,

C. D., treasurer of the within-named union.

## CHAPTER XXIX.

### PARTNERSHIP.

AGREEMENT BY A CLERK TO A RETIRING TRADESMAN,  
WITH HIS MASTER, TO CARRY ON THE BUSINESS  
FOR HIS BENEFIT.<sup>7</sup>

Parties.

Recital.

ARTICLES of agreement made, &c., between I. L., of, &c., of the one part, and T. E., of, &c., of the other part. Whereas it hath been agreed between the parties hereto, that the said T. E. (who, for some time past, hath conducted and managed the trade or business of the said I. L.) should continue in the management thereof, under the covenants, restrictions, and agreements, hereinafter contained; and whereas an inventory and appraisement hath been made and taken of the stock of and belonging to the said business, and entered in two books, which have been signed by both the parties hereto, and it hath been agreed, that one of such books should be kept by the said I. L., and the other of such books by the said T. E. Now, these presents witness, and it is hereby agreed between the parties hereto, that the said T. E. shall and will, for the term of years now next ensuing, for and on the behalf, and

<sup>7</sup> This and the following form ought to have been transferred to the chapter on Agreements, but the error was not discovered in time.—*Ed.*

in the name of the said I. L., well and faithfully, and according to the best of his skill and judgment, manage, carry on, and conduct the aforesaid trade and business of                    of the said I. L. ; with full power and authority for such purpose, to use and trade with the said stock, and to manage, improve, and renew the same as the said T. E. (subject to any directions which the said I. L. may at any time give to him for that purpose) shall seem meet ; and by and out of the money which shall arise by sale of any part or parts of the said stock, to buy such goods as shall be requisite to keep up and continue the present quality and value thereof ; and it is hereby also agreed and declared, that, by and out of the profits which shall arise from the trade or business, the said T. E. shall, in the first place, pay and discharge the rent of the said house and shop, and all taxes and parochial duties which now are, or shall hereafter be assessed or imposed on him, the said I. L., or the said T. E., on account of the said house and trade ; and, in the next place, pay or retain to himself, the said I. L., yearly, and every year during the said term of                    years, the yearly sum of L.                    by equal half yearly payments, on the                    day of                    &c. &c., without any deduction or abatement whatsoever ; as a recompence and satisfaction for his care and trouble in the conduct and management of the said trade or business. And the said T. E. doth hereby, for himself, his executors, and administrators, covenant, declare, and agree, with and to the said I. L., his executors, administrators, that he, the said T. E., shall and will, from time to time, and at all times hereafter, for and during the said term of                    years, if they, the said I. L. and T. E., shall so long jointly live, diligently apply himself to the care and management of the said stock, trade, and business, according to his best skill, abilities, and discretion, and pay, apply, and dispose of the money which shall arise from the sale thereof, and all the profits of his trade and dealings, after payment and satis-

Out of profits  
to pay rent of  
shop,

and to pay I.  
L. an annuity.

Residue to  
T. E.

Covenant by  
T. E. to be  
diligent.

Books to be  
kept.

T. E. not to  
deal in his  
own name.

To render an  
account at  
Christmas.

faction of the expenses to be incurred in keeping up and renewing the said stock and otherwise, in the carrying on, conduct, and management of the said business, unto the said I. L., his executors or administrators, or as he or they shall direct. And also, shall and will write and keep true and perfect entries in proper books of account of all such goods as shall be sold, and of all moneys which shall be paid and received by him, and of all other accounts and transactions of or connected with the said business, and permit the same, from time to time, to be inspected by him, the said I. L., or such person or persons as he shall appoint. And further, that he, the said T. E., shall not, nor will at any time, during the continuance of the said term of        years, buy or sell, or in anywise trade or deal in his own name, but on the behalf, and in the name only, of the said I. L.; nor do any act whatsoever whereby the said stock, or any part thereof, may be attached, distrained, or taken in execution. And also, that at Christmas next, and so at every succeeding Christmas during the continuance of the said term of        years, or oftener, if thereto required by the said I. L., he, the said T. E., shall and will take a full account and estimate in writing of the stock, for the time being, remaining in the said trade, and of the profits thereof, and deliver the same to the said I. L. And that, at the expiration, or other sooner determination of the said term of        years, he, the said T. E., his executors or administrators, shall and will deliver up to him, the said I. L., his executors or administrators, all such stock as shall then be remaining and undisposed of, to and for his or their own use and benefit. In witness, &c.

*An Agreement between a Trader and his retiring Partner for the Purchase of the Lease of a House, Stock, &c.*

Articles of agreement between, &c. [*Recite the partnership, &c.*] Now, the said C. D. doth hereby covenant, promise, and agree, to and with the said

E. F., that he, the said C. D., shall and will, on or before            make and execute an assignment of the said indenture of lease, and the messuage and premises therein comprised, with their appurtenances, free from all incumbrances, with all usual and proper covenants, unto the said E. F., for the residue of the said term of        years, under and subject to the rents, covenants, and provisos payable, or to be observed in respect thereof. And the said E. F. doth hereby covenant, promise, and agree, that thereupon, and so soon as an assignment of the said premises shall be made and executed to him as aforesaid, he, the said E. F., shall and will pay, or cause to be paid, to the said C. D., the sum of L.        , for the purchase of the good-will of the said premises. And further, that the said E. F. shall and will purchase from the said C. D. all his share and interest in the stock in trade in and upon the said premises, together with all the fixtures and utensils thereto belonging, at a fair appraisement, to be made by two regular appraisers, one to be chosen by the said C. D., and the other by the said E. F.\* And the said C. D., in consideration of the said sum of L.        , doth hereby covenant and agree with the said E. F., that he, the said C. D., shall not, nor will, exercise the trade of a        , which he now useth, during the residue of the said term of        years, within the parish of        . And for the true performance of this agreement, each party bindeth himself unto the other in the penal sum of L.        of lawful money of Great Britain, to be recovered as and in the nature of liquidated damages, &c. In witness, &c.

Also stock in trade.

\* In order to give effect to an agreement as to the transfer of a business or good will, a person may bind himself not to carry on some particular business, or not to trade in some particular place, for some limited time; but a general restraint upon a party's right to trade is illegal and void. *Ward v. Byrne*, 9 Law Journ. 14 Ex.

Not to carry on any business on separate account.

As to premiums and fees.

As to dealings by one partner after notice from the other.

As to the application of payments by former clients of partners.

That neither of them, the said partners, shall or will, at any time during the continuance of the said copartnership, carry on, prosecute, or defend any suit or suits at law or in equity, or make any conveyances, deeds, writings, or securities, or transact or do any other affairs or business incident or belonging to the profession of an attorney, solicitor, or conveyancer, for any profit or advantage, on his own separate account, or for or on any other account than for the joint benefit of the said partners, in the proportion hereinafter mentioned. That all premiums which will be received with articulated clerks, and all fees, emoluments, and benefits that shall arise from the exercise by the said partners respectively, of the office of steward, receiver, agent, or court keeper, of any other person or persons, or of the office of vestry clerk, clerk to magistrates, commissioner of bankrupts, or of any other public office whatever, shall be considered and accounted for as profits of the said partnership. That if either of the said parties hereto shall give credit to, or pay or expend any sum or sums of money, for or on account of any person or persons whomsoever, after having been forewarned and required by the other of them not so to do, the party so doing shall alone pay and bear any loss which may be occasioned thereby, and his share of the profits of the said business shall stand charged with the same. That all and every sum and sums of money which shall at any time hereafter be paid to or received by either of the said parties, from any person or persons whomsoever, who now is or are indebted to either of them, the said J. P. and R. J. R., for or on account of any business heretofore done and performed by either of them, shall, in the first place, be applied in and towards the payment and discharge of such debt or debts as were due or owing from such person or persons, to either of the said parties hereto, before the commencement of the said copartnership; and the remainder of such sum or sums (if any)

contained.] Now, this indenture witnesseth, that, in consideration of the mutual trust and confidence which the said parties hereto respectively repose in each other, and also in consideration of the sum of, &c., each of them, the said J. P. and R. J. R., doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the other of them, his executors and administrators, in manner following; (that is to say,) that they, the said J. P. and R. J. R., shall and will become, continue, and be copartners in the business or profession of attorneys, solicitors, and conveyancers, for the term of \_\_\_\_\_, from the day of the date of these presents, (if they, the said parties, shall so long live.) That the said copartnership business shall be carried on at the office or chambers in Lincoln's-Inn-Fields, now in the occupation of the said J. P., or at such other place as the said parties shall agree, under the name or style of P. and R. [*If the business should be carried on in the house of the said partners, insert the following agreement.*] That during so long as the said business shall be carried on in the dwelling-house of the said R. J. R. he shall be paid, and allowed by and out of the copartnership funds, the yearly rent or sum of L. \_\_\_\_\_ for and towards the rent and taxes of the said office, and of such part of the dwelling-house as may be employed in and upon the account of the said business, in the same manner as such business hath been lately carried on there, and for the usual necessary coals, candles, and attendance of servants. That, on the dissolution of the said copartnership, by effluxion of time, the offices or chambers in which the said partnership-business shall be then carried on shall be let or disposed of, and neither of the said partners shall, directly or indirectly, practise or carry on business therein for the space of \_\_\_\_\_ years from the time of such dissolution. [*Add provisions as to the capital, the bankers, and the division of profit and loss, and allowance to partners, as agreed on.*] (See post.)

Mutual covenant to become partners.

Place and style of business.

Who is to be allowed a yearly sum in consequence.

Not to carry on business on partnership premises after dissolution.





mutual trust and confidence which each and every of them, the said A., B., and C., have and repose in and towards the other and others, each and every of them, the said parties hereto, doth hereby expressly covenant, promise, and agree with the other and others of them, by these presents, in manner and form following; (that is to say,) That they, the said A., B., and C., shall and will become, continue, and be copartners in the said trade or business of \_\_\_\_\_, for the term of \_\_\_\_\_ years, to commence from the day of the date hereof, (if they, the said A., B., and C., shall so long live.)

That the said copartners shall not, nor will at any time hereafter, use, exercise, or follow the trade of \_\_\_\_\_, or any other trade whatsoever, during the said term,<sup>b</sup> for their private benefit or advantage; but shall and will, from time to time, and at all times during the said term, (if they shall so long live,) do their and each of their best and utmost endeavours, in and by all means possible, to the utmost of their skill and power, in the said copartnership business, for their joint interest, profit, benefit, and advantage. *[Add provisions as to amount of stock to be brought in by each partner; the style of the firm; the appointment of a banker; the shares in which the parties are to divide the profit and loss; provisions as to drawing bills of exchange, &c.; and as to keeping the accounts; for which see post.]*

Neither party to carry on any separate trade.

That there shall be had and kept, from time to time, and at all times during the said term and copartnership together as aforesaid, perfect, just, and true books of accounts, wherein each and every of the said copartners shall duly enter and set down as well all money by him received, paid,

Books to be kept.

<sup>b</sup> A covenant not to exercise the same trade on a separate account is a good and legal covenant, (18 Ves. 438;) but the engaging not to enter into any particular trade will not prevent them from engaging in some other business that will not be injurious to the partnership concern. (1 Sim. and Stu. 133.)

expended, and laid out in and about the management of the said trade, as also all wares, goods, commodities, and merchandises by them, or any or either of them, bought and sold, by reason or means, or upon account of the said copartnership, and all other matters and things whatsoever to the said joint trade and the management thereof in anywise belonging or appertaining; which said books shall be used in common between the said copartners, so that any or either of them may have free access thereto, without any interruption by the other.

Apprentices  
not to be  
taken with-  
out consent.

That no apprentice shall be taken by any or either of them, the said parties hereto, without the consent of the other of them, and that every apprentice who shall be so taken shall be employed in the said joint trade, and that every premium which shall be received with any such apprentice shall be brought into the said copartnership stock. Provided always, nevertheless, that it shall be lawful for any or either of the said partners, at any time during the said copartnership, to take any one or more of his sons as an apprentice or apprentices to him in the said business of a , without being liable to pay or account to the said copartnership for any premium in respect thereof.

Except as to  
sons of part-  
ners.

As to hiring  
clerks, &c.

That no clerk or other servant shall, during the continuance of the said copartnership, be hired into, or discharged from, the service of the said copartnership, by any or either of the parties hereto, without the written consent of the others and other of them.

Partners not  
to make cer-  
tain purchases  
without con-  
sent.

That not any or either of the said parties shall buy, order, or engage in any contract for any goods, wares, or merchandises whatsoever, exceeding the value of L. , without the consent, in writing, of the others and other of them first obtained. And if any or either of the said parties shall buy, order, or contract for any goods, wares, or merchandises, exceeding the value of L. , contrary to this present stipulation, then it shall be in the choice or option of the others and other of them, either to take

such goods, wares, or merchandises, on account of the said joint trade, or to allow the same to remain for the separate use of the party who shall so buy or contract for the same.

That in case of the decease of any one of the said partners before the expiration of the said term of years, the said partnership shall cease and be dissolved as to such partner only, and the joint trade or business shall or may be carried on and conducted by the surviving partners for all the residue of the said period of years, upon the same terms and conditions, and subject to the same stipulations, (so far as circumstances will admit,) as are herein contained. And the said surviving partners shall be respectively interested in the share of the partner so dying as aforesaid, in the said joint trade or business, and the profits to arise therefrom, in the same relative proportions in which they are interested in the other or remaining shares of the said partnership. *[Add provision for reference to arbitration.]* In witness, &c.

Declaration that upon the decease of one, partnership shall subsist between survivors.

*Forms applicable to all Partnership Articles.*

That , or such other persons as the said parties shall jointly approve, shall be the bankers of the said copartnership.

Bankers.

That all and every sum and sums of money that shall be received by either of the said parties, on account of the said copartnership business, and all other moneys of the said copartnership, shall, from time to time, as the same shall be received, be paid into the bank of the said copartnership, to the joint account of the said copartnership.

Payment of money into bank.

That all cheques, bills of exchange, and promissory-notes, made, drawn, indorsed, and accepted by [any or] either of the said partners, on the joint account of the said partnership, shall be made, drawn, indorsed, and accepted in the name of the said partnership firm.

As to bills of exchange.

That they, the said [*partners,*] shall be interested

Division of profits.

in, and entitled to the capital and property, and to the nett gains and profits of the said copartnership, practice, or business, in equal shares and proportions, [or] in the shares and proportions hereinafter mentioned; that is to say, &c.

**Name of firm.** That the firm and style of the copartnership shall be C. and F.

**Place of business.** That the business of the copartnership shall be carried on at \_\_\_\_\_, or at such other place or places as the partners shall hereafter agree upon.

**Capital.** That the capital necessary to be employed in carrying on the business of the copartnership shall be L. \_\_\_\_\_, which shall be advanced by the partners in the following proportions; (that is to say,) &c.

And that if, at any time or times hereafter, it shall be thought necessary to increase the capital of the copartnership, the partners then for the time being engaged in the copartnership shall advance the additional capital for the time being required, in the proportions in which they shall then be respectively entitled to the nett gains and profits of the copartnership business.

**As to expenses and losses.** That the rents, taxes, and impositions payable for, or in respect of the rooms and offices where the said copartnership business shall for the time being be carried on, and the wages, salaries, and maintenance of all clerks and servants to be employed in the said business, and all other expenses, losses, and damages, which shall be incurred or sustained in carrying on the same, or in anywise relating thereto, shall be paid and borne by and out of the funds, moneys, and effects of the said copartnership; or, in case the same shall at any time be insufficient for that purpose, then by the partners for the time being engaged in the said copartnership, in the proportions in which they shall be respectively entitled to the nett gains and profits thereof.

**Provision authorizing partners to** That in every year during the said copartnership, it shall be lawful for the partners to take out the moneys, funds, and effects of the copartnership, by

equal portions, on the                      day of                      and the                      apply certain  
                     day of                      in every year, the annual sum                      sums for their  
 of L.                      . And the said annual sum to be taken                      own use.  
 out shall be divided between or amongst the said  
 (partners,) in the same shares and proportions in  
 which they shall be respectively entitled to the nett  
 gains and profits of the copartnership.

That proper books of account shall be kept by the                      Provision for  
 said partners, and that entries shall be made therein                      keeping ac-  
 of all such matters, transactions, and things, as are                      counts.  
 usually written and entered into books of account  
 kept by persons engaged in concerns of a similar  
 nature.

That the said books of account, together with all                      Custody of  
 securities, letters, and other writings which shall,                      books, &c.  
 from time to time, concern the said copartnership,  
 shall remain and be kept at the shop or office where  
 the business of the said copartnership shall, for the  
 time being, be carried on; and that each [and every]  
 of the said partners shall have free access to inspect,  
 examine, cast up, and copy out the same, without  
 any hindrance or denial of or by the other [or others]  
 of them.

That neither [or not any] of them, the said partners,                      That partners  
 shall, without the consent, in writing, of the [others                      shall not be-  
 and] other of them, for that purpose first had and                      come surety,  
 obtained, enter into any bond, or become bound as                      &c. without  
 bail, surety, or security, with or for any person or                      consent.  
 persons whomsoever, or subscribe any policy of in-  
 surance, or do, or knowingly suffer to be done, any  
 act, deed, matter, or thing whatsoever, whereby, or  
 by means whereof, the stock and effects of the said  
 copartnership may be seized, attached, extended,  
 or taken in execution.

That neither [or not any] of the said partners                      Nor release  
 shall, without the consent of the others or other of                      debts, &c.  
 them, compound or release any debt due to the said  
 copartnership, or deliver up any security belonging  
 thereto, without receiving the full amount or value  
 thereof, or sign any certificate of any bankrupt, or

do any act whereby the effects of the copartnership may be lost or lessened, (except only in cases of unavoidable necessity,) and shall indemnify the said copartnership from all such loss or damage as may be occasioned by any breach or non-compliance of or with the last mentioned covenant or agreement.

For dissolution,  
on mis-  
conduct of  
partners.

That if [any or] either of them, the said partners, shall at any time or times, without the consent of the [others or] other of them, apply to his separate use any of the stock, moneys, debts, and effects of the said copartnership, to the amount of L. or upwards; or if the said stock, moneys, debts, and effects, or any part thereof, shall be seized, attached, or taken in execution for or on account of the private and separate debts or engagements of [any or] either of them; or in case [any or] either of them, the said partners, shall make any composition with his creditors, or shall, by gaming, lose or hazard at any one time, or at any one chance, the sum of L.50 or upwards, then, and in any of the said cases, it shall be lawful for the [others or] other of the said partners, by giving notice, in writing, to that effect, to such partner, or leaving the same at his usual place of abode, to expel him from the said copartnership. And the copartnership [as to such person] shall cease and determine from the time when such notice shall be so given or left as aforesaid, as if the same term of years had expired.

That partners  
will devote  
their time to  
business.

That the said partners respectively shall be true and just to each other in all their contracts, sales, reckonings, receipts, payments, and dealings, and shall at all times, during the said partnership, devote their whole time and attention to the conduct and management of the said business, and the concerns of the said partnership, unless they shall be prevented by sickness, or other reasonable cause of excuse, arising without their own respective default.

As to bills of  
exchange.

That neither of the said partners shall, without the consent of the other or others of them, draw or accept any bill of exchange, or promissory-note, or

contract any debt on account of the said partnership, except in the usual course of business, and for the benefit of the said partnership.

That neither [or not any] of the said partners shall assign over his share or interest in the said partnership effects, or withdraw, for his private use, the whole or any part of his share of the capital stock of the said partnership, or become bail or surety for any person or persons whomsoever, or carry on, either separately or in partnership with any other person or persons, the profession or business of , or , or any other trade or business whatsoever, without the consent of the other [or others] of them, or knowingly or willingly do, commit, or permit any act, matter, or thing whatsoever, by means of which the said partnership moneys or effects may be seized, attached, extended, or taken in execution.

Partners not to assign their shares.

That during the continuance of the said partnership, and within two calendar months after the day of in every year, unless the said partners, or either of them, shall be prevented by illness, and then, as soon after the said period as circumstances will permit, the said partners shall make a full and particular account, in writing, of all the moneys, credits, and effects due and belonging to the said partnership, and of all debts due or owing by or from the said partnership, to any person or persons, by reason thereof, which said annual account shall, within the time aforesaid, be written in two books, to be respectively subscribed by the said partners; and after such subscription, each of the said partners shall take one of the said books into his custody, and shall be concluded by the said account, unless some error shall appear therein, and be notified within the space of twelve calendar months next after the taking of such account, when the same shall be opened, so far only as to rectify such error. And that, upon the making of every such yearly account, all interest which shall become due to either of the said partners, for any sum or sums of money to be lent by

Annual statements.



him to the said partnership, shall, in the first place, be taken by the partner lending the same, and afterwards, the said partners respectively shall divide between them, in the proportion aforesaid, the clear profits of the said partnership business, which shall have accrued or been gained in the preceding year.

Provision for  
reference to  
arbitration.

That if, at any time hereafter, whether during the said copartnership, or after the determination thereof, any doubt, difference, or dispute, shall arise between the said parties hereto, their heirs, executors, or administrators, or any two or more of them, touching the construction of these presents, or any of the clauses, covenants, or agreements herein contained, or any account, valuation, or appraisement to be made as herein before mentioned, or any matter, cause, or thing whatsoever, in anywise relating to, or concerning the said copartnership, or the conducting, or management, or final settlement of the same, such doubt, difference, or dispute shall, at the request of any one of the parties in difference, and within thirty days after such request, be referred to the award or arbitration of two [or more] indifferent persons, one of such persons being nominated and appointed by each of the parties in difference, (but so that where two or more persons shall take the same side in the dispute or difference, such persons shall be considered as one party thereto, and entitled to appoint one arbitrator only;) and in case such arbitrators shall not agree upon an award within the space of thirty days next after such dispute or controversy shall be referred to them, or within such further time as may be agreed upon for that purpose by the parties in dispute, then such doubt, difference, or dispute, shall be referred to the determination of such indifferent person as the said arbitrators, by any writing under their hands, shall nominate and appoint as umpire in the premises, and that the award and determination of such arbitrators or umpire, as the case may be, touching all the matters in difference referred to them, shall be binding and

conclusive on all the parties to such reference, their executors or administrators, so that such award be in writing, under the hands of the party or parties making the same, and ready to be delivered to the parties in difference within thirty days after he or they shall be so appointed; and that in case any or either of the parties in difference shall, for the space of thirty days after such notice or requisition as aforesaid, neglect or refuse to appoint or concur in the appointment of such arbitrators as aforesaid, it shall be lawful for the arbitrator to be chosen by the party giving such notice, to appoint some other person to act as arbitrator for and on behalf of the party or parties so neglecting to make such appointment; and any award in which such arbitrator shall join and concur shall be binding, in like manner as if he had been actually chosen and appointed by the party so neglecting or refusing as aforesaid. And, lastly, that, for the further and better enforcing and insuring the performance and observance of every such award so to be made as aforesaid, the reference or submission for or in respect of the same shall, from time to time, be made a rule of the Court of Queen's Bench at Westminster, according to the provisions of the statute in that case made and provided, and that the reference shall not be defeated or affected by the death of any of the parties thereto, pending the same.

*Admission of a Partner.*

\* *Articles of Agreement* made, &c., between, &c. Whereas A., B., and C., have, for some years past, carried on the business or trade of \_\_\_\_\_ in copartnership together, upon, under, and subject to the terms, provisions, and agreements contained in the within written presents; and whereas it hath been

\* This form is intended to be indorsed on the articles of copartnership, but by a fuller recital it may be used for a distinct instrument.

agreed between the parties hereto, that, in consideration of the sum of L. , to be paid to them, the said A., B., and C., by the said D., he, the said D., should be admitted and become a partner in the said trade or business with them, the said A., B., and C., for the residue of the within mentioned term of years. Now, these presents witness, that, in consideration, &c., and it is hereby agreed and declared, between and by the parties hereto, that he, the said D., shall and will henceforth become, continue, and be a copartner with them, the said A., B., and C., in the said trade and business of , for the residue of the said term of years. And it is hereby also agreed and declared between and by the parties hereto, that, from henceforth, the said several parties hereto shall be liable to pay, bear, and sustain all the costs, losses, damages, and expenses of the said trade or business, and of carrying on and managing the same, and also be entitled to divide and share the profits and gains to arise and be derived from the said business, in the shares and proportions following; (that is to say,) &c.; but that, in all other respects, the said trade or business shall be carried on, conducted, and managed upon, under, and subject to all the terms, provisoes, conditions, and agreements within mentioned, so far as the same may be applicable to a partnership of four persons, or as near thereto as the altered circumstances of the case may permit, as fully and effectually, to all intents and purposes, as if the same terms, agreements, matters, and things, were herein particularly mentioned, expressed, and repeated, and the name of the said D. therein inserted. And it is hereby agreed and declared by and between the said parties hereto, that, subject to the conditions and agreements contained in the said articles of copartnership, the copartnership stock, estate, and effects belonging to the said late partnership of A., B., and C., shall henceforth become and be the property, and belong to the said parties hereto, as such copartners as aforesaid, and

Declaration  
that property  
shall belong  
to copartners,  
their respec-  
tive executors,  
&c.

their respective executors, administrators, and assigns. In witness, &c.

*Dissolution of Copartnership.*

This indenture, made, &c., between, &c. Whereas Parties.  
 the said T. F., J. G., and J. J., have for some time Recital of the  
 past carried on the trade or business of in co-articles of co-  
 partnership with each other, under the firm of, &c., partnership.  
 and under and subject to the terms and condi-  
 tions contained in a certain indenture or articles  
 of copartnership, bearing date, &c. And whereas  
 the said, &c., have mutually agreed to dissolve the  
 said copartnership, from the day of the date hereof,  
 [or] as from the day of last. And where-  
 as upon the treaty for such dissolution of copartner-  
 ship as aforesaid, it was agreed that the said T. F.  
 should, in consideration of the sum of L. to be to  
 him paid by the said J. G. and J. J., assign to the said  
 J. G. and J. J. his one-third or other part or share of  
 and in the said partnership stock in trade, estate, and  
 effects, as hereinafter mentioned. Now, this inden- Witnessing  
 ture witnesseth, that, in pursuance of the said agree- Part.  
 ment, they, the said, &c., with the mutual assent of  
 each other, have determined and dissolved, and by  
 these presents do determine and dissolve the said co-  
 partnership, and do declare that the same shall [as  
 from the, &c., last] cease and determine. And this Operative  
 indenture further witnesseth, that, in further pursu- part.  
 ance of the said agreement, and in consideration of  
 the sum of, &c., to the said T. F. in hand paid by the  
 said J. G. and J. J., at or before the execution of  
 these presents; and in consideration of the covenants Release and  
 and agreements hereinafter contained, on the part of assignment  
 the said J. G. and J. J., he, the said T. F., hath grant- of goods.  
 ed, bargained, sold, released, and assigned, and by  
 these presents doth, &c., all that the one undivided  
 third part or share, or other part or share of him, the  
 said T. F., of and in all and singular the stock in  
 trade, and other estate and effects, &c., of and be-  
 longing to the said copartnership; and of and in all

Leasehold  
premises,  
and debts.

Power of  
attorney to  
J. G. and  
J. J. to bring  
action, &c., to  
recover  
effects.

Substitute.

and singular the leasehold messuages, lands, tenements, and houses; and of and in all and singular the debts and sums of money, and all other the estate, effects, profits, and interest whatever, of and belonging, or due and owing to them the said, &c., as such copartners as aforesaid; and all the estate, right, title, interest, property, claim and demand whatsoever, of him the said T. F., of, in, to, or out of the said one undivided third part or share and premises, hereinbefore assigned, or intended so to be, and every part thereof; to have and to hold the said one undivided third part or share, and premises, unto the said J. G. and J. J., their executors, administrators, and assigns, as tenants in common, to and for their own use and benefit. And for the better enabling the said J. G. and J. J., their executors and administrators, to receive the said debts, sums of money, and other premises, hereby assigned, or intended so to be, he, the said T. F., hath made, ordained, constituted, and appointed, and by these presents doth irrevocably, &c., the said J. G. and J. J., jointly and severally, his true and lawful attorney and attorneys, in the name of the said T. F., or in their or his own names or name, as they shall think necessary or expedient, to ask, demand, sue for, recover, and receive, by all lawful and equitable ways and means whatsoever, of and from all and every person and persons whom it doth, shall, or may in anywise concern, or who ought to pay the same, the said sums of money, debts, and other premises intended to be hereby assigned; and in case of non-payment thereof, or of any part thereof respectively, to commence and prosecute any suit or action for the recovery thereof, or of any part thereof; and on receipt thereof, or any part thereof respectively, from time to time to sign, seal, give, and execute, good and sufficient releases, acquittances, and discharges for the same; and also, for any of the purposes aforesaid, to appoint and substitute one or more attorney or attorneys under them, the said, &c., their executors or administrators; and from time to time

to displace or remove any such attorney or attorneys, and any other person or persons in his or their place and stead, to substitute and appoint; and generally to make, do, and execute all and every such act and acts, thing and things, as shall or may be necessary or expedient for obtaining, getting in, and receiving the said sums of money, debts, and other premises hereby assigned, or intended so to be, as fully and effectually, in all respects, and to all intents and purposes, as he, the said T. F., could or might have done in case these presents had not been made. And the said T. F. doth hereby agree to allow, ratify, and confirm, all and whatsoever the said J. G. and J. J., their executors, administrators, and assigns, or their substitute or substitutes, shall lawfully do or cause to be done in the premises, according to the true intent and meaning of these presents. And\* the said J. G. and J. J., for themselves, jointly and severally, and for their respective heirs, executors, and administrators, do hereby covenant, promise, and agree, to and with the said T. F., his executors and administrators, that they, the said, &c., or one of them, their, or one of their heirs, executors, or administrators, shall and will, within the space of three calendar months now next ensuing, pay and discharge all the debts, and perform all the contracts and engagements, which the said, &c., or any of them, are liable to pay or keep, for or on account of the said copartnership, and from time to time, and at all times hereafter, save, defend, keep harmless and indemnified the said T. F., his heirs, executors, and administrators, and his and their lands and tenements, goods and chattels, of and from the said debts, contracts, and engagements, and of, from, and against all actions, suits, costs, charges, damages, claims, and demands whatsoever, on ac-  
To pay debts.

\* As all the partners are jointly liable for the debts and engagements of the firm contracted during the partnership, it is usual therefore for an indemnity to be given to the retiring partner, (see *Bedford v. Deakin*, 2 B. and A. 210.)

Mutual  
release.

count thereof. And, lastly, the said T. F. on the one part, and the said J. G. and J. J. on the other part, do hereby acquit, release, and discharge the others and other of them of and from all and all manner of action, and cause and causes of action, suits, accounts, sums of money, claims, and demands whatsoever, either at law or in equity, which any or either of them, the said, &c., their executors and administrators, now have or hath, or may have, against the others or other of them, their or his heirs, executors, or administrators, for or by reason or on account of the said copartnership, or of any of the covenants and agreements contained in the indenture of copartnership.<sup>d</sup> In witness, &c.

#### OBSERVATIONS ON ARTICLES OF PARTNERSHIP.

As persons do not, ordinarily speaking, enter into partnership with those in whom they do not repose confidence, it has often occurred that the terms of partnerships, even of a most important character, have not been reduced into writing, the memory and honour of the parties being their only protection; but when it is considered how treacherous the memory often is, and how frequently the rights of third persons depend upon contracts of this character, the propriety of having them reduced into writing must be obvious. Mr Jarman, an able writer, to whom I have before referred, gives the following advice for the guidance of those to whom the preparation of partnership contracts may be entrusted:—"In preparing partnership deeds,"<sup>e</sup> says that author, "care should be taken to mark with precision and clearness the nature of the business; the period at which the partnership is to commence; the term of its duration; the proportions in which the parties are to share the

<sup>d</sup> As to the duty of a partner upon retiring, see *post*. p. 572.

<sup>e</sup> Jarman's edition of Bythewood, vol. vii. 30.

profits and losses, and advance the capital; the mode in which the accounts are to be kept, and the business in general carried on; the degree of attention to be paid by the respective partners; the grounds, if any, on which one party shall be empowered to expel or exclude the other from the concern; whether, on the decease of either of the partners, his personal representatives are to have the option of succeeding to his share; in what manner, on the dissolution of the partnership, by effluxion of time, death, expulsion, or otherwise, the partnership accounts are to be adjusted, and the affairs wound up; and, lastly, whether any and what stipulation is to be made for referring disputes to arbitration."

The articles of copartnership, though binding between the parties themselves, cannot affect the rights of others, except so far as they may have notice of the terms of the partnership agreement; and to the debtors of a partnership persons may be jointly liable as partners, though no real partnership subsists between them: Thus, if any person were to hold himself out, or permit his name to be used, as one of a partnership firm, he would be liable to be sued jointly with the real members of that firm, although he might have no interest in the partnership effects or profits, for no one shall be permitted to lend his name to others to enable them to obtain a false credit, by leading persons dealing with them to imagine that they had the security of a greater number of persons than was really the case, without incurring that responsibility which he had led others to believe he had taken upon himself; but, on the other hand, though a real partner should have concealed his name, and not therefore been the means of obtaining any additional credit for the partnership, yet as he withdraws for his own use part of the funds to which the creditors trusted for the satisfaction of their demands, and thereby renders the ostensible partners less able to satisfy such demands, he incurs the same liabilities

Dormant and  
nominal part-  
ners.



as the more active and ostensible members of the firm.<sup>f</sup>

A person who, at the time of dealing with the partnership, knew the want of interest in an ostensible partner, and not therefore having been misled by false appearances, could not charge such ostensible partner as though he were really interested in the partnership.<sup>g</sup>

The duties and obligations arising out of a partnership are regulated by the terms of the agreement between the parties; but if such an agreement should not extend to all those duties and obligations, a contract arising from the relationship of partners will be implied, and enforced by the law.<sup>h</sup> If any of the clauses in the copartnership articles are not acted upon by the parties, the articles will be construed as if they did not contain them.<sup>i</sup>

Where the articles are silent on those points, it will be considered (and parol evidence will not be admitted to contradict it) that the partnership commenced at the date of the articles,<sup>k</sup> and that the parties are equally interested in the profits,<sup>l</sup> and liable to bear the losses in the same proportions.<sup>m</sup> The partners may, as between themselves, make such stipulations and arrangements as to the proportions in which their liabilities and losses shall be borne; but to persons dealing with the partnership, each partner is liable to the whole amount of the joint liabilities,<sup>n</sup> except as to persons who were acquainted with the provisions of the partnership articles giving an exemption from liability to any of the partners,<sup>o</sup> or to

<sup>f</sup> *Grace v. Smith*, 2 Bl. Rep. 998.

<sup>g</sup> *Alderson v. Pope*, 1 Camp. 404, n.

<sup>h</sup> *Crawshay v. Collins*, 15 Ves. 226.

<sup>i</sup> *Jackson v. Sedgwick*, 1 Swanst. 470.

<sup>k</sup> *Williams v. Jones*, 5 Barn. and Cress. 108.

<sup>l</sup> *Peacock v. Peacock*, 16 Ves. 56.

<sup>m</sup> *Ex parte Williams*, 11 Ves. 5.

<sup>n</sup> *Grace v. Smith*, 2 Bl. Rep. 998.

<sup>o</sup> *Galway v. Matthew*, 10 East, 266.

whom any partner had given notice that he was not or would not be liable,<sup>p</sup> who would be bound by the terms of such provisions, or the disclaimer of liability contained in the notice.

Each partner is bound by all the acts and engagements of the others done and entered into in the course of the partnership business;<sup>q</sup> but not for any unconnected with it, or in cases where the party with whom the partner was dealing actually knew, or from the nature of the transaction, might have known, that it was unconnected with the partnership business, or unauthorized by the partnership articles;<sup>r</sup> but except in the cases of a release of a debt<sup>s</sup> of a bond to the Lord Chancellor, and some other matters in bankruptcy, as choosing assignees by himself or attorney, or signing the certificate,<sup>t</sup> one partner cannot bind another by deed, unless under an authority for that purpose given by deed, but a deed executed by one partner on behalf of himself and another, in that other's presence, and with his approbation, is binding on both.<sup>u</sup>

A partnership for an indefinite time may be dissolved at any time, and by any of the parties;<sup>v</sup> but where a particular term for its duration has been agreed upon, it cannot be dissolved before the expiration of that period, except by the consent of all

Dissolution of partnership.

<sup>p</sup> Lord Galway *v.* Matthew, 1 Camp. 403; *Vice v. Fleming*, 1 Yo. and J. 227.

<sup>q</sup> *Swan v. Steele*, 7 East, 210; *Ridley v. Taylor*, 13 East, 175.

<sup>r</sup> *Id.* and *Snaith v. Burridge*, 4 Taunt. 684; Lord Galway *v.* Matthew, 10 East, 226; *Ex parte Goulding*, 2 Glyn and Jam. 118; *Ex parte Bonbonus*, 8 Ves. 540.

<sup>s</sup> *Tooker's Case*, 2 Rep. 68.

<sup>t</sup> *Ex parte Mitchell*, 14 Ves. 597; *Ex parte Hall*, 17 Ves. 62; *Ex parte Hodgkinson*, 19 Ves. 291. The execution of the certificate, though mentioned here, is not exactly in point, not being under seal.

<sup>u</sup> *Burn v. Burn*, 3 Ves. 578.

<sup>v</sup> *Peacock v. Peacock*, 16 Ves. 49.

the parties, the decree of a court of equity, or the death, bankruptcy,<sup>v</sup> or (in case of a woman) the marriage<sup>z</sup> of one of the parties.

The lunacy of one of the partners does not of itself work a dissolution; but it is a circumstance which would have great weight with a court of equity in inducing it to decree a dissolution, especially if there should be but little prospect of a return to soundness of mind, and the party becoming lunatic was the principal acting partner, and one to whom the others looked for the chief management of the business.<sup>y</sup> The court will decree a dissolution whenever the partnership cannot be beneficially carried on,<sup>z</sup> as upon any breach of faith, or such misconduct in any of the partners as would destroy that confidence in him which induced the others to enter into the partnership,<sup>a</sup> or when any violent or lasting dissension exists between them; but every quarrel, angry dispute, or slight misconduct, is not considered a sufficient ground for decreeing a dissolution.<sup>b</sup>

**Dissolution.**

Upon a dissolution of partnership, during the life of the parties, every step should be taken to make it known. A publication in the Gazette is generally considered a sufficient notice to the world at large, but the customers of the partnership<sup>c</sup> are

<sup>v</sup> *Ex parte Ruffin*, 6 Ves. 126; *Crawford v. Hamilton*, 3 Mad. 257; *Ex parte Williams*, 11 Ves. 5; *Crawshaw v. Collins*, 15 Ves. 228; but in case of the bankruptcy of a partner, his assignees will be tenants in common with the other partners, subject to all their rights; *Fox v. Hawbury*, Cowp. 449; *West v. Skip*, 1 Ves. jun. 239.

<sup>z</sup> 1 Swanst. 517, n.

<sup>y</sup> *Wrexham v. Huddleston*, 1 Swanst. 516, n.; *Waters v. Taylor*, 2 Ves. and Bea. 303; *Sayer v. Bennett*, 1 Cox, 107.

<sup>a</sup> *Baring v. Dix*, 1 Cox, 213.

<sup>b</sup> *Waters v. Taylor*, 2 V. and B. 304.

<sup>c</sup> *Goodman v. Whitcomb*, 1 Jac. and W. 592.

<sup>d</sup> *Graham v. Hope, Peake*, 154.

entitled to a more distinct notice of the dissolution, which is generally given by means of a circular addressed to each of them.<sup>4</sup> Every precaution, such as having the name erased from the door, checks, printed bills, or other place where the joint names appear, should be used by a party retiring from a partnership, especially where the business of the partnership is intended to be carried on by any of the partners alone.

This precaution is necessary, in order to avoid that liability which a retiring partner would incur towards those persons who, having known of the existence of the partnership, should deal with any of its members after a dissolution, in ignorance that the partnership had been determined.<sup>5</sup>

Whether a court of equity will entertain a bill by one partner against the others for an account of the partnership transactions which does not pray a dissolution of the partnership, is a point upon which some difference of opinion appears to have been entertained. In July 1830,<sup>6</sup> the Vice-Chancellor allowed a demurrer to a bill for an account because a dissolution was not prayed; but in the following February before that case was reported, a decree was made at the rolls,<sup>7</sup> by Sir John Leach, for an account, although the bill contained no prayer for a dissolution of the partnership; but he refused to make any order for carrying on the partnership business, unless with a view to a dissolution. As the decision in the case of *Loscomb v. Russell* does not appear to have been known by the Master of the Rolls at the time he gave his judgment, and it has

<sup>4</sup> *Barfoot v. Goodal*, 3 Camp. 149; *Jenkins v. Blizzard*, 1 Stark. 418.

<sup>5</sup> *Williams v. Keats*, 2 Stark. 290; *Dolman v. Orchard*, 2 Car. and P., 104; *Parkins v. Carruthers*, 3 Esp. 248.

<sup>6</sup> *Loscomb v. Russell*, 4 Sim. 8.

<sup>7</sup> *Richard v. Davies*, 2 Russ. and M. 347.

been since followed in the Exchequer,<sup>b</sup> it must be considered as entitled to the most weight. Unless it is otherwise provided by the terms of the copartnership, the partners, after a dissolution in their lifetime, or the executors of a deceased partner, are entitled to have the value of the partnership effects ascertained by a sale, and cannot be compelled to submit their rights to a valuation.<sup>c</sup>

After the determination of a partnership between professional men, either party is at liberty to continue his own exertions, unless restrained from doing so by express stipulation.<sup>d</sup>

If, after a dissolution, any of the former customers of the partnership should become indebted to one of the partners, and should make any payments to such partner without any direction as to their application to his private account, such partner would, it appears, be bound to appropriate them, in the first instance, to the satisfaction of the balance due to the dissolved partnership.<sup>e</sup>

<sup>b</sup> *Knebell v. White*, 2 Y. and Coll. 15.

<sup>c</sup> *Crawshay v. Collins*, 15 Ves. 227; *Featherstonhangh v. Fenwick*, 17 Ves. 298; *Rigden v. Peirce*, Mad. and G. 353.

<sup>d</sup> *Farr v. Pearce*, 3 Mad. 72.

<sup>e</sup> *Toulmin v. Copeland*, 9 Law Jo. 8. Ex. N. S.

## CHAPTER XXX.

### POWERS OF ATTORNEY.

#### POWER OF ATTORNEY TO PROSECUTE AN ACTION IN AMERICA.<sup>m</sup>

To all to whom these presents shall come, A. B., of the town of B., in the county of S., within that part of the United Kingdom of Great Britain and Ireland called England, widow, sendeth greeting. [*Recite the debt due and owing from, &c.*] Now, know ye, <sup>Power.</sup> that the said A. B., for divers good causes and considerations her thereunto moving, hath made, ordained, authorized, nominated, constituted, and appointed, and by these presents doth make, ordain, authorize, nominate, constitute, and appoint, and in her place and stead put and depute F. L., of, &c., the true and lawful attorney of her, the said A. B., for her and in her name, or in the name of the said F. L., as her attorney, as shall be thought the most proper and convenient, but for her use, to ask, demand, collect, get in, and receive, of and from the said Messrs H. and M., or either of them, the said sum of L. <sup>To ask, demand, &c.</sup>, and all interest, costs, and charges in respect thereof, and all and every debt and debts, sum and sums of money whatsoever, due and owing by and from the said, &c.; and in like

<sup>m</sup> This form, which is rather long, may be easily shortened without impairing its efficacy.

To give receipts, &c.

And on non-payment to prosecute, &c.

And to settle and adjust, &c.

manner to collect, get in, and receive of and from all and every other person and persons resident in the said island of Portland, or elsewhere, in North America; and all and every debt and debts, sum and sums of money, due and owing by them, him, or her, to the said A. B.: And upon receipt of the said sum of L. , as also any other such debt or debts, sum or sums of money, to make, sign, give, and execute all and every such receipts, acquittances, or other good and sufficient discharges for the same, as shall be requisite and necessary in that behalf: And on non-payment of such debt or debts, sum or sums of money, or any of them, or any part thereof, to commence, institute, and prosecute, or to appear to, answer, and defend any action and actions, suit or suits, attachment or attachments, or other proceedings at law or in equity, or otherwise against, or by them, the said H. and M., or either of them, and such other person or persons (if any) as aforesaid, as shall or may be deemed necessary or advisable by the said F. L., for the recovery of the same debt or debts, sum or sums of money, or any of them, or any part thereof; and for that purpose to appear before any judge, justice, magistrate, registrar, or any other proper officer or officers, in the said province of as occasion shall require; and thereupon to do, execute, and perform such acts, deeds, matters, and things, as shall be requisite or expedient, according to the laws, rules, and customs of the United States of America, or of the said province of, &c. And also to settle and adjust with the said H. and M., and such other person or persons (if any) indebted as aforesaid to the said A. B., all accounts and reckonings which now are, or at any time hereafter may be open, depending, and unsettled between the said A. B. and the said H. and M., or such other person or persons (if any) indebted to the said A. B.; and to submit to reference and arbitration any difference or dispute that shall or may arise, touching, or in any manner relating to any

such debt or debts, sum or sums of money, as aforesaid; and for that purpose to make, sign, seal, and deliver, any agreement or agreements for, or any bond or bonds of arbitration, or reference, in any reasonable penalty, to abide by, enforce, and perform the award, order, and determination which shall or may be made by the arbitrators or referees therein; And to prove any debt or debts due, or to become due, to the said A. B., under any act or acts for the relief of insolvent debtors, or under any commission or commissions of bankrupt, which is, or are, or shall or may be issued against the said Messrs H. and M., or any or either of them, or any such other person or persons (if any) indebted to the said A. B. as aforesaid, and to vote in the choice of assignees, and to accept and take the dividend or dividends to become payable under the same act or acts, commission or commissions; and also to compound for all and every, or any such debt or debts, sum or sums of money, due and owing to the said A. B.; and in the name of her, the said A. B., or otherwise, as occasion shall require, to do, execute, and perform all such other acts, deeds, matters, and things, as shall be needful or expedient, in and about the premises, as fully and effectually, to all intents and purposes, as she, the said A. B., could do herself, being personally present. And for the better and more effectually executing the powers and authorities aforesaid, she, the said A. B., doth hereby authorize and empower the said F. L. to make, substitute, and depute, one or more attorney or attorneys, deputy or deputies, substitute or substitutes under him, and in his place and stead, with full power and authority to execute and perform all and every, or any of the powers and authorities hereby vested in and given to him, the said F. L.; and such attorney or attorneys, deputy or deputies, substitute or substitutes, so to be nominated by them, from time to time, to displace or remove, and another or others to appoint and depute in his or

To substitute,  
&c.



Not answer-  
able for any  
loss, without  
wilful ne-  
glect.

Authority to  
register.

their room or stead, she, the said A. B., hereby ratifying, allowing, and confirming, and agreeing to ratify, allow, and confirm, all and whatsoever her said attorney shall do in the premises. And that such attorney, or his deputy or deputies, substitute or substitutes, executors or administrators, shall not be answerable for any loss which may happen in or about the execution of the powers aforesaid, without his or their wilful neglect or default. And, lastly, the said A. B. doth hereby authorize and empower her said attorney to acknowledge these presents before the registrar or other proper officer or officers of the said island, or other proper place, and that the name, handwriting, and seal, set, subscribed, and affixed to these presents, is the proper name, handwriting, and seal of the said A. B., and that the same was duly executed by her as and for her proper act and deed; and to do and perform all or any other acts, matters, and things, necessary or expedient for the registering of these presents, if such registry shall be necessary, as fully and effectually as the said A. B. could do herself, if she were personally present. And also all other acts and things which may be necessary to be done for rendering these presents valid and effectual to all intents and purposes, according to the laws and customs of the said island of, &c., or the local laws of the country where it shall be necessary to execute and obtain the purposes of these presents.<sup>a</sup> In witness whereof, the said A. B. hath, &c.

Affidavit of  
the execution  
of power.

<sup>a</sup> There must be an affidavit made of the due execution of the power of attorney by one of the witnesses, as follows, and annexed to the power of attorney:

"L. M., of, &c., maketh oath and saith, that he was present and did see A. B., of, &c., duly sign, seal, and as her act and deed deliver the letter of attorney hereunto annexed; and that the name subscribed against the seal of the said letter of attorney is the proper handwriting of the said A. B., and that the names [*as signed*] subscribed to the said letter of attorney as witnesses to the execution thereof

*Power of Attorney to distrain for Rent.*

Know all men, &c., that I, A. B., of, &c., for divers <sup>Appointment</sup> good causes and considerations me hereunto moving, <sup>of an attorney.</sup> have nominated, constituted, and appointed, and, &c., C. D., of, &c., and E. F., of, &c., jointly and seve-

by the said A. B., are of this deponent's and of the said A. B.'s own proper handwriting.

Sworn at, &c., before me, O. P.,  
Mayor of , " &c.

An affidavit of the debt should be made and annexed to <sup>Affidavit of</sup> the power of attorney : <sup>debt.</sup>

"England (to wit.)—A. B., of, &c., in the county of S., widow, maketh oath and saith, that Messrs H. and M., of Portland, in the province of , in North America, merchants and copartners, are justly and truly indebted unto this deponent in the sum of, &c., for," &c.

A certificate should be given by the chief magistrate of <sup>Certificate by</sup> the city or town, with the seal of office affixed, and annexed <sup>a magistrate.</sup> to the affidavits, after this form :

"To all to whom these presents shall come, I, O. P., mayor of, &c., in that part of the United Kingdom of Great Britain and Ireland called England, in pursuance of an act of Parliament made and passed in the 5th year of the reign of his late Majesty King George II., intituled, 'An act for the more easy recovery of debts in his Majesty's plantations and colonies in America,' hereby certify, that, on the day of the date hereof, personally came and appeared before me, A. B. and L. M., the deponents respectively named in the annexed affidavits, being persons well known and of good credit, and by solemn oaths which the said deponents then respectively took before me upon the holy Evangelists of Almighty God, did respectively solemnly and sincerely declare, testify, and depose to be true, the several matters and things named and contained in the said annexed affidavits. In faith and testimony whereof, I, the said mayor, have caused the seal of the office of mayor of the said city of, &c., to be hereunto put and affixed ; and the deed-poll or letter of attorney mentioned and referred to in and by one of the said affidavits to be hereunto also annexed. Dated at the Guildhall, in the said city of, &c., the day of 1840."

ally, my true and lawful attorney and attorneys, for me and in my name, place, and stead, jointly or severally to enter into and upon all that messuage or tenement, farmlands, hereditaments, and premises, situate and being in the parish of, &c., in the county aforesaid, and now in the tenure or occupation of G. H., his under-tenants or assigns, and held by him of me at and under the yearly rent of £. ; and

To enter. To make distress, and sell. General grant. Ratification.

to make or cause to be made one or more distress or distresses of all or any hay, corn, goods, chattels, beasts, sheep, or other effects or things whatsoever, standing, lying, and being in and upon the said demised premises, or any part thereof, for all such rent or rents that was, or were, and now is due and owing to me, to Michaelmas-day last past, for or on account of the said premises, or any part thereof; and such distress or distresses, when made or taken, for me and on my behalf to hold, detain, and keep, until payment and satisfaction to be made to me for all such rent due and in arrear to me, and all costs and charges of making such distress; and in case of non-payment thereof within the time limited, after such distress made, by the laws now in force, to appraise, sell, and dispose of the same, or cause the same to be appraised, sold, and disposed of according to law, I the said A. B. giving and granting unto my said attorneys and attorney, jointly and severally, full power and authority, for me and in my name and on my behalf, to do or cause to be done all such acts, matters, and things whatsoever, touching, concerning, or in anywise relating to the said premises, as fully, to all intents and purposes whatsoever, as I the said A. B. might or could do, in my own proper person, in case these presents had not been made. And whatsoever my said attorneys or attorney, or either of them, shall lawfully do or cause to be done in or about the premises, I hereby for myself, my heirs, executors, and administrators, agree to allow, ratify, and confirm. In witness, &c.

*To receive a Legacy.*

To all to whom, &c., I, C. D., of, &c., send greeting.

Whereas [*recite the will.*] And whereas the said Recital.  
E. F. hath proved the said will, and I the said C. D.  
have sealed such general release to the said E. F. as  
by the said will is directed, and left the same in the  
hands of my attorneys hereinafter named, to be deli-  
vered to the said E. F. on payment of the said sum  
of, &c. Now know ye, that I, the said C. D., have Appointment.  
made, ordained, constituted, deputed, and appointed,  
and by these presents do make, ordain, constitute,  
depute, and appoint I. E., of        and I. S., of  
my true and lawful attorneys and attorney, jointly  
and severally, for me and in my name, and for my  
use, to ask, demand, sue for, recover, and receive of  
and from the said E. F., or such other persons to  
whom it doth, shall, or may belong to pay the same,  
the said legacy or sum of L.1000, so given and be-  
queathed to me, the said C. D., by the said A. B., in  
and by her said will as aforesaid, together with any  
interest which may be due for the same; and upon  
receipt thereof by my said attorneys, or either of  
them, to deliver the said general release so sealed  
as aforesaid, or to give such other discharge as shall  
be sufficient;° I hereby ratifying, allowing, and con-  
firming, and promising and agreeing, at all times,  
and from time to time, to ratify, allow, and confirm

° Here may be added, " And on non-payment of the said legacy or sum of L.        , or any part thereof, or of any interest due in respect thereof, to commence and prosecute, for me and in my name, all such remedies, suits, and means, for recovering and receiving the same, as effectually, to all intents and purposes whatsoever, as I myself could or might have done, if personally present, and these presents had not been made; and also, from time to time, and at all times, to nominate, substitute, and appoint any attorney or attorneys under them, the said, &c., or either of them, for all or any of the purposes aforesaid." On non-pay-  
ment to prose-  
cute, &c.

all and whatsoever my said attorneys, jointly or separately, shall lawfully do, or cause to be done in the premises. In witness, &c.

*Power of Attorney to take Admittance<sup>p</sup> of Copyhold Lands, and to surrender.<sup>q</sup>*

To all to whom, &c., I, A. B., send greeting:

Recital of  
surrender.

Whereas R. D. and E. his wife, on the 1840, did surrender into the hands of the lord of the manor of C., in the county of S., according to the custom of the same manor, one close of land, &c.,

As to admittance by attorney.

<sup>p</sup> The lord is not compellable to admit the copyholder by attorney, as fealty cannot be sworn by attorney; yet if he do so admit, the admittance will be good. A surrender may be by attorney, without a special custom; but a purchaser is not obliged to accept such surrender. *Ante*, 205.

Another form.

<sup>q</sup> Another form to take admission, (see 9th Geo. I., c. 29, 81):—"Know all men, &c., that I, A. B., of, &c., (eldest son and heir, &c.,) [*as the case may be*,] one of the customary or copyhold tenants of the manor of, &c., according to the custom of the said manor, have made, ordained, deputed, constituted, and appointed, and, &c., my true and lawful attorney, for me, the said A. B., and in my name, place, and stead, to appear at the next general or special court-baron to be holden for the said manor of \_\_\_\_\_, or at any other subsequent court-baron, to be holden for the said manor; and then and there, for me and for my sole use and benefit, to pray admittance unto, and be admitted tenant of all, &c., to the end, intent, and purpose that I, the said A. B., my heirs and assigns, may hold the same by copy of court-roll, at the will of the lord, according to the custom of the said manor, by the rents, duties, and services therefore due and of right accustomed; and for me and in my behalf, to pay all such fines, dues, and moneys, as shall then and there be payable for or by reason of such admittance; and generally for me, the said A. B., and in my name, to do and execute all and every such acts and things as shall or may be necessary and requisite for procuring me, the said A. B., to be admitted a copyhold or customary tenant of the said manor, as fully and effectually, to all intents and purposes whatsoever, as I, the said A. B., could or might do if I were personally present; I hereby promising and agree

containing by estimation, &c., lying in W., in the said county, and holden by copy of court-roll of the said manor by the yearly rent of L. to the use and behoof of me, the said A. B., and my heirs for ever, according to the custom of the said manor; subject nevertheless to a condition for making void the same, if the said R. D. and E. his wife should pay unto the said A. B. the sum of L. , on a day long since past. And whereas the said surrender was made unto the said A. B. in trust for the dean and chapter of the cathedral church of, &c., and the moneys thereupon lent were the proper moneys of the said dean and chapter, and the condition of the said surrender is not yet performed: Now, know ye, that I, the said A. B., in discharge and performance of the trust so in me reposed as aforesaid, at the request and by the direction of the said dean and chapter, do by these presents make, depute, constitute, authorize, and appoint I. W., of the city of, &c., in the county aforesaid, gent., my true and lawful attorney, for me and in my name, place, and stead, to pray for, and to receive, have, and take admittance of and from the lord of the manor of C. aforesaid, or his steward of his court there, of, in, and to the said several closes of land and premises before-mentioned, with the appurtenances, according to the custom of the manor aforesaid; and at any time after such admittance so had and taken, to surrender into the hands of the lord

And that that  
surrender was  
in trust.

Appointment  
of I. W. to re-  
ceive admis-  
sion.

ing to repay unto my said attorney all such sum and sums of money, costs, charges, and expenses, as he shall be required to pay, or shall sustain, or be put unto in the execution of the trusts hereby in him reposed, or the matters and things aforesaid, or any of them. In witness," &c.

A power of attorney to surrender copyhold premises may be in the following form:—"To surrender into the hands of the lord or lords, lady or ladies, of the said manor of, &c., according to the custom of the same manor, all, &c., to the use, &c., according to the custom of the same manor, and the true intent and meaning of a certain indenture, bearing or intend-

The form of  
a power to  
surrender.



my said attorney shall receive; and to make any agreement of composition for my said distributive share of my said sister's personal estate, or for any other matter or thing due to me from her estate; and whatsoever my said attorney shall do, or cause to be done, in and about the premises, I do hereby ratify and confirm, and agree to ratify and confirm the same, to all intents and purposes whatsoever. In witness, &c.

*To demand Rent, and, on default of Payment, to re-enter, according to a Proviso for such Re-entry in a Lease.*

To all, &c. Now, know ye, &c., that, &c.

To demand and receive, of and from J. L., of, &c., on, &c., at, &c., situate, &c., the sum of L. , of lawful money of Great Britain, which will become due unto me, the said F., from the said J. L., on the said, &c., for one half-year's rent for the said messuage, lands, and tenements, with their appurtenances, which, by an indenture of lease, bearing date the day of in the year of our Lord were by the said A. B. demised unto the said J. L., for a certain term of years yet unexpired. And in default of payment of the said sum of L. , I give and grant unto my said attorney full power and authority to enter into and upon the said messuage and premises, and of the same for me, and in my name and stead, to take possession, to the intent that the said indenture of lease may become void, according to a certain proviso for that purpose therein contained. And further, to execute and perform all things requisite and necessary to be done in and about the execution of these presents, according to the true intent and meaning thereof. In witness, &c.

*Power of Attorney to vote in the choice of Assignees.*

Know all men by these presents, that I, A. A., of, <sup>Power.</sup> &c., one of the creditors of B. B., against whom a fiat of bankruptcy, under the hand of the Lord High Chancellor of Great Britain, hath been awarded and



issued, have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint C. C., of, &c., my true and lawful attorney, for me and in my name, place, and stead, to appear before the commissioners in and by the said fiat named and authorized, or the major part of them, at, &c., or elsewhere, at the days and times appointed in the London Gazette, for the choice of assignees of the estate and effects of the said B. B., and then and there, for me and in my name, to consent with whom the moneys to be received from time to time, amounting to the sum of L.                      and upwards, out of the said bankrupt's estate and effects, shall remain until the same be divided. And also, for me and in my name, to vote in the choice of one or more assignee or assignees of the said bankrupt's estate or effects. And also, in case that I, the said A. A., should happen to be chosen assignee under the said commission against the said B. B., then, as my said attorney, and for me and in my name, to accept the said trust; and further, to act, do, and perform all and whatsoever shall be needful and requisite to be done, in, about, or concerning the premises. And I do hereby ratify, confirm, and allow all and whatsoever my said attorney shall lawfully do, or cause to be done for me, by virtue of these presents, and of the power and authority hereby to him by me given. In witness, &c.'

Affidavit of  
the execution  
of power.

Affidavit of the execution of the above power of attorney :—" T. H., of, &c., maketh oath, that he was present and did see A. A., of, &c., duly sign, seal, and as his act and deed deliver the power of attorney hereunto annexed; and that the name A. A., subscribed against the seal of the said power of attorney, is the proper handwriting of the said A. A.; and that the names of this deponent and of D. D., subscribed to the said power of attorney as witnesses to the execution thereof, are of this deponent's and of the said D. D.'s own proper respective handwriting.

Sworn at A., in the county of B., the, &c., }  
before me,                      A. B., }

184

Master Extraordinary in Chancery.

## \* OBSERVATIONS ON POWERS OF ATTORNEY.

It will be necessary to make but very few observations on this head. An attorney may be appointed by parol; but as a deed is necessary in those cases where it is intended to give the attorney power to do any act under seal,<sup>1</sup> or to deliver seisin,<sup>2</sup> it is the general, and certainly an advisable practice, to make the appointment by deed in all cases.

Persons who are disqualified from acting in their own capacity, as infants and *femes covert*, may yet act as agents for others.<sup>3</sup>

A power of attorney is in general revocable by the party giving it at any time, and without the assent or even the knowledge of the attorney;<sup>4</sup> but where the appointment forms part of a security, or is otherwise united with some interest in the person to whom or in whose favour it is given, it cannot be revoked without the assent of such person;<sup>5</sup> and where the appointment is under seal, it can be revoked only by deed.<sup>6</sup>

The extent of the attorney's power cannot be greater, or of longer duration, than that of his principal, and, consequently, he can do nothing after the death of the latter, which is necessarily a revocation, or rather a determination of the power.<sup>7</sup>

<sup>1</sup> *White v. Cuyler*, 6 T. R. 176; *Berkley v. Hardy*, 8 Dowl. and R. 102.

<sup>2</sup> Co. Litt. 52 b.

<sup>3</sup> Co. Litt. 52 a; *Emmerson v. Blondell*, 1 Esp. 142; *Cromwell v. Hyrean*, 2 Esp. 511; *Anderson v. Sanderson*, 2 Stark. N. P. C. 204.

<sup>4</sup> 5 B. and C. 355.

<sup>5</sup> *Walsh v. Whitcomb*, 2 Esp. 565; *Watson v. King*, 4 Camp. 272; *Hodgson v. Anderson*, 3 Barn. and C. 842; *Gausson v. Morton*, 10 Barn. and C. 731; *Bromly v. Holland*, 7 Ves. 28.

<sup>6</sup> *Jarm. Byth.* vol. v. 150.

<sup>7</sup> *Lepard v. Vernon*, 2 Ves. and B. 51; *Watson v. King*, 4 Camp. 272; S. C. Stark. 121; Co. Litt. 52 b.

Where two or more persons concur in the appointment of an attorney, each of them has the power of revoking the appointment, even without the consent of the other.\*

It is a general rule, that no one can take any thing under a deed, except by way of remainder, who is not a party to it; but it is the custom to appoint persons attorneys to deliver or receive seisin in a feoffment, without making them parties to the deed of feoffment; and though such appointments are stated by Lord Coke to be bad,† there are decisions in their favour; and there is no doubt but that they would be now considered valid.

A subsequent power will be considered a revocation of a previously existing power relative to the same matters, unless it should clearly appear that the attorney appointed by the subsequent power is intended to act conjointly with, and not instead of the one first appointed.‡

It has been elsewhere noticed, that an attorney executing a deed for his principal must do so in his principal's, and not in his own name; *ante*, p. 3 and 115.

An authority to do any act implies an authority to do every other act which is incident to it, or necessary to its performance;§ but with its qualification it may be stated as a universal proposition, that an attorney has no powers beyond those actually given him by the terms of his appointment, and with which he must act in strict accordance.\* Thus where the power authorizes two persons to act jointly, the acts of one alone would be invalid;† and where a power is given to receive and recover all moneys, and

\* Bristow v. Taylor, Stark. 50.

† Jarm. Byth. vol. v. 150.

‡ White v. Cuyler, 6 T. R. 176; Berkley v. Hardy, 8 Dowl. 102; 5 B. and C. 355.

§ Randall v. Harvey, 2 H. Bl. 610.

\* Parker v. Kett, 1 Salk. 95.

† Guthrie v. Armstrong, 5 B. and A. 628.

to compound, discharge, and give releases, the attorney is not thereby authorized to negotiate or indorse bills in the name of his principal, even though his doing so might be in furtherance of the objects of his appointment;<sup>1</sup> but where the power authorizes the attorney to deliver seisin of premises, according to the form and effect of the deed of feoffment, the livery is good, though not made on the day of the execution of such deed.<sup>2</sup>

A general power to an attorney to receive moneys authorizes him to receive a legacy.<sup>3</sup>

A party will not be entitled to receive dividends on stock under an ordinary power, but a power for that purpose must be obtained from the Bank of England.

If a power is given to more than two to act jointly and severally, one only, or the whole number, must concur in any act;<sup>4</sup> but the act of two would be considered neither joint nor several, unless the power was given to "any of them."<sup>5</sup>

The accountant-general of the Court of Chancery, and most other public officers, themselves prepare the powers of attorney upon which they are to act; and care should be taken to follow exactly the directions given for verification of the signatures, and for the affidavits required from the attesting witnesses.

Where a power of attorney is transmitted to the East Indies to recover a debt due to a person resident in London, it should be accompanied by affidavits by the creditor, and some third person verifying the debt; which affidavits should be sworn before the mayor, whose signature should be certified by a notary-public and the assistant secretary of the company;—this certifies that such notary is a public no-

<sup>1</sup> *Murray v. the East India Company*, 5 B. and A. 204.

<sup>2</sup> *Roe dem. Heale v. Rashleigh*, 3 B. and A. 156.

<sup>3</sup> *Carr v. Eastbrook*, 2 Cox, 390.

<sup>4</sup> *Co. Litt.* 181 b.

<sup>5</sup> *Guthrie v. Armstrong*, 5 Barn. and Ald. 628.

tary practising in London. For these forms, see Chitty's Commercial Law, vol. iv. p. 30. In order to avoid the necessity of having more than one affidavit, the person deposing to the fact of the debt being due should be one of the attesting witnesses to the power of attorney, and should make the affidavit of its execution.

Where a power is intended to be used in the United States, the person executing it should attend at the office of the Consulate, (which, in London, is near Bishopsgate Church,) where the execution will be duly authenticated; but if this be impracticable, the party should produce the power in the presence of a notary-public, and two other persons, and the notary will attest it by an act in the usual way. The papers should then be taken to the Consulate's office of the States, (at the nearest port,) where the necessary authentication of the notary's act may be obtained. If the power is to be used in the United States only, no stamp will be requisite.

## CHAPTER XXXI.

### ON THE PROTECTORATE.

AFTER the able way in which the provisions of the 3d and 4th William IV., c. 74, have been handled, the editor feels that he should be guilty of little short of presumption, were he to attempt to add any thing of his own on the subject; nor is it possible, within the compass allowed in a work of this character, to give any thing like a general view of what has been written on the subject; but he trusts that the illustrative tables, and few explanatory notes which he has prepared, with a view of assisting the practitioner in the application of those provisions of the act which more immediately relate to the office of Protector, will not be found altogether unacceptable.

It is important, in using the following tables, that the reader should bear in mind the definitions of the word "Settlement," as used in this act of Parliament. It is defined, in the 1st section, to be an "assurance, whether by deed, will, act of Parliament, or otherwise, by which lands are or shall be entailed or agreed, or directed to be entailed;" and by the same section it is provided, that an appointment under a power shall be considered part of the settlement creating the power, and that the death of the

testator shall be considered the date of a settlement made by will, a provision which is consistent with the general law of wills, as altered by the 1st Victoria, c. 26. The person who, under the permanent provisions of the act, will be entitled to the protectorship, is pointed out in the second table; but as the act contains particular provisions, made out of respect to vested rights, which, for some years to come, will in many instances interfere with those of a permanent nature, it will be necessary, before resorting to that table, to ascertain whether any one may be in existence, who, under the temporary clauses, may be entitled to the office of protector. To facilitate this inquiry, the editor has attempted, in the first table, to point out who may be so entitled. Should the temporary provision not point out any protector, then resort must be had to the permanent provision; and it may be noticed, that, in cases where there is no protector, owing either to the death of any party, or the fact of none having ever been in existence, the tenant in tail has in himself all the powers that he would have had if a protector was in existence, and assented to his acts.

## TABLE I.

Person who  
would have  
been tenant  
to the precipe.

1st, Where an estate created by the same settlement as the estate tail was originally assigned prior to 1834, if the present owner of it (whether the original assignee or not) would have been the person to make a tenant to the precipe, had the act not passed, he shall be the protector, sect. 29.

2d, Where the estate tail was created prior to 1834, out of a remainder or reversion, the person who, if this act had not passed, would be entitled to make a tenant to the precipe, shall be protector, sect. 30.

3d, The person who, in respect of an estate created by a settlement made prior to 28th August 1833, would be the person to make a tenant to the precipe, shall, notwithstanding he may be a bare

trustee, be protector of an estate tail created by it, sect. 31.

Lands were settled, prior to 28th August 1833,  
 Upon A. for life, upon trusts remainder.  
 To B. for life remainder.  
 To C. in tail.

A. is the protector, sect. 31.

Under a settlement made prior to January 1, 1834, lands were settled,

Upon A. for life remainder.  
 To B. for life remainder.  
 To C. in tail.

A., prior to 1st January 1834, conveyed his estate to D.  
 D. or his assignee is the protector, sect. 29.

A testator who died prior to 1834 devised lands to  
 A. for life remainder.

To C. in fee.

C., in 1833, settles his remainder on himself for life,  
 remainder to D. in tail. A. is protector, sect. 30.

If there should be no protector under the foregoing provisions, then it should be ascertained whether there is any one in existence having the qualifications mentioned in the following table, going through them in the order there named.

TABLE II.

The following are the estates to the ownership of which the office of protector is annexed by the statute :—

Estates conferring the right to protectorship.

An estate for years determinable on a life or lives—an estate *pur autre vie*—an estate for life—an estate by the courtesy, in respect of the estate tail;\* but the protectorship is not annexed to those estates, unless they were created, or (in the case of a ten-

\* From the cases of *Re Blewitt*, 3 M. and K. 250, and *Re Wood*, 3 M. and Cr. 266, it would appear that a tenant in tail in possession is not the protector of an estate tail in remainder.



ancy by courtesy) exist in respect of an estate created, by the same settlement as the estate tail.

1st, The persons,<sup>o</sup> if any, who may have been appointed protectors, either by the settler himself, or by some other person, under a power for that purpose, contained in the settlement, sect. 32. If no such protector should be in existence, then,

2d, A tenant by the courtesy, in respect of the estate tail intended to be barred, or in respect of any prior estate created by the same settlement as that estate tail. This right continues, though the party charges, or even absolutely parts, with his estate.

3d, The person who is (or who, but for the transfer of his estate, would have been) the owner of the first existing estate created by the same settlement as the estate tail.

*N. B.*—This right to the protectorship is personal, and only extends to the first taker of the estate; and though such estate might not determine at his death, but devolve upon his real or personal representatives, or his widow, as doweress, or upon his devisee, none of these persons will be protectors; and unless there should be a person qualified to be protector, in respect of some subsequent estate, the protectorship would devolve upon the Court of Chancery.

4th, Where there is more than one prior estate, and the owner of the first estate is a bare trustee, assignee, devisee, heir, executor, administrator, doweress, or lessee at a rent, and therefore not qualified to be protector, the person who would be entitled, in case such estate had determined, shall be the protector, sect. 28.

In the case of a married woman being entitled to the protectorate, in respect of an estate not settled, or agreed to be settled, to her separate use, her husband shall be protector jointly with her, sect. 24.

If the estate conferring the right to the protectorate shall be vested in two or more owners, then each of such owners shall be the protector, in respect of his undivided share.

<sup>o</sup> Not more than three may be appointed.

The Court of Chancery is the protector in the following cases :—

Where the protector is a convicted traitor or felon.

When the protector named by the settler, or under a power given by him, is an infant.

Where it is uncertain whether the protector named by the settler, or under such power, is living.

Where the settler has excluded the owners of the prior estates from the protectorate, and not substituted a protector in their place.

And in all other cases where there are prior estates sufficient to qualify the owners thereof to be protector, and yet there shall be no protector.

Where the protector is an idiot or lunatic, whether found so by inquisition or not, the protectorate, by the 33d section, is vested in the Lord Chancellor, Lord Keeper, or other person to whose care they are entrusted; but in cases<sup>p</sup> where the interests of the lunatic would be affected by the exercise of the powers of the protector, it has been considered that this clause is not applicable.<sup>q</sup>

An estate is vested in A. for 99 years	remainder.	Tenant for
To B. for life	remainder.	life in re-
To C. in tail.		mainder.
B. is protector.		

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A. for life	remainder.	Protector of a
To B. in fee. B. settles his remainder upon C. for	remainder.	remainder.
99 years, if he should so long live		
remainder		
To D. for life	remainder.	
To C. in fee.—C. is protector.		

<sup>p</sup> *Re Blewitt*, 3 M. and K. 250; *Re Wood*, 3 M. and C. 266.

<sup>q</sup> For the principles on which the Court acts in the character of protector, see *Re Blewitt*, 3 M. and K. 250; *Grant v. Yeas*, *Re Yea*, Id. 245; *Re Newman*, 2 M. and C. 112.

- Appointee.** An estate is settled upon such uses as A. shall appoint, in default of appointment, to B. for life, remainder to C. in tail. A. appoints to D. for life.  
D. is protector.
- 
- Courtesy.** A., a woman tenant in tail, died, leaving her husband B. tenant by the courtesy, and her eldest son C. issue in tail. B. is the protector, sect. 22.
- 
- Resulting estate.** A. conveys an estate to B. to the use of C., after his own (A.) death, remainder to D. in tail. An estate for life resulting to A., he is protector.
- 
- Heir.** An estate is settled on A. and his heirs during the life of B. remainder to D. for life remainder to C. in tail. A. dies in the lifetime of B., and his estate descends to his heir. D. is protector, sect. 27 and 28.
- 
- Executor's Court of Chancery.** Lands were settled Upon A. for 99 years, if B. should so long live remainder to C. for life. Remainder to D. in tail. C.'s estate for life becomes determined by his death, and A. dying during the life of B., his term descends upon his executors. The Court of Chancery is protector during the remainder of B.'s life; but if C. had survived A., C. would have been the protector.
- 
- Assignment.** An estate is limited to A. for life remainder. To B. for life remainder. To C. in tail. A. conveys his estate to E., a stranger. He remains protector; but if A. conveys to B., or A.'s estate is otherwise merged in B.'s, then B. is protector.

## CHAPTER XXXII.

### RECEIPTS.

RECEIVED, on the day of the date of the within-written indenture, of and from the within-named C. D., the sum of five hundred pounds, being the consideration-money within-mentioned to be by him paid to me.<sup>7</sup>

L.500.

Received, the       day of, &c., of and from A. B., of, &c., the several deeds, papers, and writings mentioned

Receipt (indorsed) for consideration-money in a deed.

Receipt by mortgagor to mortgagee of the deeds.

<sup>7</sup> The acknowledgment in the body of the deed is not conclusive evidence of payment, (Styl. 462; 1 Ca. Chan. 119; Coppin v. Coppin, 2 P. Wms. 290;) but where it is recited in the deed as an antecedent fact, it will not be requisite to indorse a receipt.

As to the release part in the body of the deed.

The release in the body of the deed estops the vendor at law from saying that the purchase-money remains unpaid; but if the indorsed receipt is not signed, the presumption in equity is that the money remains unpaid. Separate receipts are generally indorsed for considerations paid to each party receiving, but the same may be included in one receipt, thus:

Operates by estoppel.

"We, the within-named A. B., C. D., and E. F., do hereby severally acknowledge to have had and received of and from the within-named (*purchaser*,) the within-mentioned sums of, &c., according as the same is mentioned to be paid to us severally by the within-written indenture, being in full for the consideration-money for the within hereditaments and premises."

Several considerations in one receipt.

gagee,) &c., the receipt, &c., [*or, if the money has been previously paid, say, "for and in consideration of the said sum of, &c., and all interest due in respect thereof, having been so fully paid and satisfied as hereinbefore mentioned, the payment whereof, &c.;"*] and that the same [*was and*] is in full payment and satisfaction of all principal, interest, and other moneys due upon or in respect of the said in part recited security, the said (*mortgagee*) doth hereby acknowledge, and of and from the same, &c., doth acquit, release, and discharge the said (*mortgagor*,) his heirs, executors, administrators, and assigns, and every of them for ever, by these presents; he, the said (*mortgagee*,) hath, &c., and by these presents doth bargain, sell, release, and quit claim unto the said (*mortgagor*,) (in his actual possession, &c.) and to his heirs and assigns, all, &c., [*take the description from the mortgage-deed,*] and the reversion, &c., and all the estate, &c. To have and to hold the said, &c., hereby released and conveyed, or intended so to be, with their and every of their appurtenances, unto and to the use of the said (*mortgagor*,) his heirs, and assigns for ever, (freed and absolutely discharged of and from the said sum of, &c., and all interest and other moneys whatsoever due in respect thereof, and all claims and demands of or by the said (*mortgagee*,) his heirs, executors, administrators, or assigns, concerning the same respectively, or otherwise, by reason of the said in part recited mortgage.) [*Add a covenant from the mortgagee that he hath done no act to incumber. If the mortgagor was married before 1834, the habendum should be to the uses for preventing dower, for which purpose a trustee must be made a party to the deed, following the mortgagor. If the purchaser was married after the first January 1834, add the declaration as in p. 52.*] In witness, &c.<sup>t</sup>

Habendum.

Re-convey-  
ance of an

<sup>t</sup> If the re-conveyance be of an outstanding legal freehold estate, the parties thereto will be the person having the legal

This indenture, made, &c., between A. B., of, &c., eldest son and heir-at-law of C. D., (*the mortgagee*), late of, &c., deceased, of the first part; E. F., of, &c., and G. H., of, &c., the executors of the last will and testament of the said C. D., deceased, of the second part; and (*the mortgagor*), of, &c., of the third part; [*recite the mortgage and default in payment*]; and whereas the said C. D., having first duly made and published his last will and testament in writing, bearing date, &c., and thereby appointed the said E. F. and G. H. executors thereof, departed this life on or about the       day of       , leaving the said A. B., his eldest son and heir-at-law, him surviving; and the said will was shortly afterwards duly proved by the said E. F. and G. H. in the Prerogative Court of Canterbury, [*then recite the amount due, and agreement for re-conveyance, as in last precedent.*] Now, this indenture witnesseth, that, in pursuance of the said recited agreement, and in consideration of the sum of L.       , of, &c., by the said [*mortgagor*], in hand at, or immediately before the execution of these presents to the said E. F. and G. H., as such

estate, or his heir, or devisees in trust, of the one part; and outstanding the owner of the inheritance, of the other part. After recit- legal freehold.  
ing the deed or will whereby the estate became vested in the re-conveying party, and the several subsequent conveyances, &c., (or, if numerous, say, "by divers," &c., as in p. 32,) whereby the present owner became beneficially entitled, and that the said, &c., at the request of the said owner, consented to re-convey the legal estate so vested in him as aforesaid, of and in the said hereditaments, in manner hereinafter mentioned, the indenture will then witness, that, in pursuance of the said agreement, and in consideration of 5s. to (*the party re-conveying*), he will, at the request, &c., (according to his estate and interest in the premises,) bargain, sell, and release unto (*the owner*) in his actual possession, &c., and to his heirs and assigns, all, &c.; to hold in fee-simple, (or to the uses and trusts of the deed or will by which the owner is entitled to the premises) Add a covenant by the re-conveying party that he has done no act to incumber.

executors as aforesaid, well and truly paid, the receipt, &c., [*as in last precedent*]; and in consideration of the sum of 5s. of like lawful money by the said [*mortgagor*] to the said A. B. at the same time paid, the receipt whereof is hereby acknowledged, he, the said A. B., at the request, and by the direction of the said E. F. and G. H., testified by their severally executing these presents, hath, &c., and by these presents doth bargain, sell, release, and confirm; and the said E. F. and G. H. have, and each of them hath, &c., and by these presents do, and each of them doth, renounce, release, quit claim, and confirm unto the said [*mortgagor*], (in his actual possession, &c.) all, &c. [*Habendum as in preceding precedent, add a covenant by the heir that he has done no act to incumber, p. 89.*] In witness, &c.

Re-convey-  
ance from the  
heir-at law  
and executor  
of the mort-  
gagee to devi-  
sees in trust  
for sale of the  
mortgagor.

\* This indenture, made, &c., between A. B., of, &c., the eldest son and heir-at-law of C. D., (*the mortgagee*), late of, &c., deceased, of the one part; and E. F., of, &c., and G. H., of, &c., the devisees in trust for sale, and executors named in the last will and testament of (*mortgagor*), late of, &c., deceased, of the other part. [*Recite the mortgage, the will, and death of the mortgagee, and the probate of his will; and recite the will and death of the mortgagor, and the proving his will.*] And whereas the said [*trustees*] have this day, out of the moneys which have come to their hands on account of the estate and effects of the said (*mortgagor*) deceased, paid to the said A. B. the said sum of, &c., with all interest due in respect thereof up to the day of the date of these presents, which the said A. B. doth hereby confess and acknowledge; and whereas the said (*trustees*), in pursuance of the trusts reposed in

To whom the  
money be-  
longa.

\* On the death of the mortgagee, the mortgage-money belongs to the executors, and the heir-at-law is considered as a trustee only for the executors, and is bound to convey to them, or to such persons as they shall direct. (*Barn. 50; Fisk v. Fisk, Prec. Ch. 11; Thornborough v. Baker, 3 Swanst. 628; Tabor v. Tabor, 1b. 636.*)

them in and by the said recited will, &c., being about to make sale of the estates devised to them by the said will of the said (*mortgagor*,) have requested the said A. B. to make such re-conveyance of the said hereditaments and premises to them, the said (*trustees*,) as hereinafter mentioned. Now, this indenture witnesseth, that, in consideration of the premises, and of the sum of, &c., (all interest due thereon having been paid by the said [*trustees*] to the said A. B.,) the receipt whereof, and that the same is in full payment, &c., he, the said A. B., doth hereby acknowledge, &c., and doth acquit, &c., and to the intent that all and singular the said hereditaments and premises may be well and effectually vested in them, the said (*trustees*,) the better to fulfil the trusts of the will of the said (*mortgagor*,) the said A. B. hath, &c., and by these presents doth bargain, sell, and release unto the said (*trustees*,) (in their actual possession, &c.,) and to their heirs and assigns, all and singular the and premises, comprised in the said recited indenture of, &c., with their rights, members, and appurtenances, together with all houses, &c., and the reversion, &c., and all the estate, &c. ; *habendum* unto and to the use of the said (*trustees*,) their heirs and assigns, (freed and absolutely discharged of and from the payment of the said sum of, &c., and the interest thereof,) but nevertheless upon the trusts, and to and for the ends, intents, and purposes, in and by the said recited will of the said (*mortgagor*) expressed, declared, and contained, of and concerning the same hereditaments and premises, and other his real (and personal) estate thereby given and devised ; [*add a covenant from the said A. B. that he has done no act to incumber.*] In witness, &c.

\*OBSERVATIONS ON RE-CONVEYANCES.

A re-conveyance, so far as it operates as a transfer or assignment of the property comprised in it, differs in no respect from the ordinary conveyances of pro-



party of a similar tenure, but as the conveying parties in such instruments are generally mortgagees who have been paid off, or trustees whose trusts have terminated, or the representatives of such parties, and not persons dealing with their own property for any valuable consideration, the only object of such deeds is the restoration to the beneficial owner of that legal interest in his property, which is vested in the re-conveying party, with a guarantee that, whilst so vested in him, it has not been incumbered or improperly dealt with.

\* The recitals and covenants in all well drawn deeds of this character are confined to those two objects, and in order to show what interest the conveying party has, the original mortgage conveyance in trust or will, and (in case such party is the representative or assignee of the original mortgagee or trustee) the assignment, will, or other acts which show the derivative title should be recited, and where the party to whom the re-conveyance is made is not the original mortgagor or cestueque trust, but claims as representative or assignee, his derivative title ought also to be shown.

No alteration\* will or ought generally to be permitted in the description of the premises, but they should be re-conveyed according to the description in the original conveyance, making such alterations only as may have become necessary, in consequence of the change of tenants, lapse of time, or otherwise.

The re-conveying parties are bound to covenant, that they have themselves done no act to incumber the premises, but they are not compellable to extend such covenants to the acts of the persons through whom they claim.

On the re-assignment of leaseholds by a mortgagee, he should ascertain that the rent and covenants

\* See some observations on recitals in re-conveyances, *ante*, p. 11 and 16.

\* See a dictum of Lord Eldon's in *Goodson v. Ellison*, Russ. 594.

have, during the period of his ownership, been satisfied, for his liability to the lessor for any non-payment, or non-performance of them during that period, remains after the assignment, and where there exists any doubt on the subject, it would be advisable to require a covenant of indemnity from the mortgagor. In case a new lease has been granted to the mortgagee under which he has become personally liable to the lessor, the party to whom the re-conveyance is made must enter into a covenant of indemnity against the future rents and covenants.\*

It is the duty of any one in whom an estate is vested, either as a mortgagee or trustee, to ascertain that the party calling for the re-conveyance is really entitled to it; but where there is no reason to doubt the title of such person, it would be highly improper to refuse to execute a re-conveyance, and if a party were captiously to do so, he would run the risk of having to pay the costs of any suit which might be instituted for the purpose of compelling him.†

It not being expected that every person to whom a re-conveyance is tendered for execution should be able to form any judgment on the propriety of his executing it at all, or in the frame in which it has been prepared, he is entitled to have it submitted to his own legal adviser, at the expense of the party requiring it, prior to executing it,‡ and except in very simple transactions, and where the party has great confidence, both in the person requiring it and his professional adviser, such precaution ought not to be dispensed with.

In a recent case,§ before the Lord Chancellor, it appeared that a party subjected himself to the annoyance of being made a defendant to a chancery suit, as the trustee of a will, simply on the ground,

\* *Ante*, p. 15, note n.

† *Angier v. Stannard*, 3 M. and K. 566.

‡ *Poole v. Pass*, 1 Beav. 600.

§ *Winch v. Walker*, 3 M. and Cr. 702.

that the deed by which he intended to renounce the trust was framed as a re-conveyance instead of a disclaimer.

Parties seeking a re-conveyance of an outstanding legal estate were formerly exposed to very great inconvenience, in consequence of the infancy of the heir of the deceased trustee or mortgagee, which subjected them to the expense and delay of a chancery suit. The practice which is now frequently adopted of devising trust and mortgage estates to executors or other adult parties, and thereby preventing them descending to an infant heir, has latterly done much for diminishing this inconvenience, and for cases where this precaution has not been adopted, the legislature have, by some recent provisions, provided a remedy by enabling parties so situated to obtain a re-conveyance without the necessity of resorting to a suit in equity.

By the act of 1st William IV., c. 60,<sup>b</sup> effect is given to the conveyance of infant trustees or mortgagees, made under the direction of the Court of Chancery, and by the 14th section of that act, parties having money to pay to infants, on the redemption of a mortgage, are enabled to obtain a good discharge by paying it into the Bank of England in the name of the Accountant-General of the Court of Chancery or Exchequer.

The benefit of this act, which can be obtained by petition to the Court, is extended to the case of unfound heirs, lunatics, parties out of the jurisdiction of the Court, and several other similar cases, of which the size and object of this work neither admit or require a discussion, and will be found to meet the great majority of those cases where, in consequence of the absence or incompetence of parties, impediments are thrown in the way of persons having the

<sup>b</sup> This act has been explained and amended in several points by the 4th and 5th William IV., c. 23, and 1st and 2d Victoria, c. 69.

beneficial interest in property, acquiring that legal dominion over it to which they are entitled, and for the full enjoyment of which the possession of the legal estate is essential.

Upon the discharge of a mortgage of copyholds to which the mortgagee has not been admitted, the mortgage-deed should be given up with a receipt for the principal and interest, and where a conditional surrender has been made, satisfaction should be entered on the rolls, but no re-conveyance is necessary. If, however, the mortgagee has been admitted, which is not often the case, a regular surrender should be made by him as soon after the payment as convenient, but even then no other re-conveyance will be necessary; but it will be equally important that the mortgagor should obtain a receipt for the money, and the possession of the mortgage and other deeds, and all other securities which he may have given.

The propriety of obtaining a re-conveyance of the legal estate as soon as the purpose for which it was separated from the beneficial interest has been satisfied, and also a surrender or assignment of satisfied terms, has been before adverted to; but the importance of doing so fully justifies a repetition of the advice not to allow a legal estate, whether in the freehold or in a term of years, to remain outstanding after the necessity for doing so has ceased.

On the creation of a mortgage, it is proper and customary for the mortgagee to give a schedule of the deeds delivered over to him; this precaution never should be dispensed with, and on the mortgage being paid off, the redelivery of all such deeds, as well as of the mortgage-deed itself, should always be strictly required.

Where the party calling for a re-conveyance is himself a trustee, and requires the outstanding estate for the purpose of enabling him to execute his trusts, the re-conveyance may be safely made without the concurrence of the cestueque trusts; but if, in parting with the legal estate, the party in whom it was vest-

ed goes beyond the mere purpose of conveying it to the equitable trustee, and so deals with it as to facilitate a breach of trust by the trustee, the cestuique trusts ought to be parties to give their sanction to such dealing, for otherwise, if a breach of trust is in consequence committed, the person so re-conveying would be responsible as a party to the breach of trust.\*

\* *Angier v. Stannard*, 3 M. and K. 566; *Poole v. Pass*, 1 Beav. 600.

## CHAPTER XXXIV.

### RELEASES.

#### RELEASE OF CLAIMS.

To all to whom these presents shall come, I, A. B., of, &c., send greeting. Whereas, &c., [*recite the occasion for the release.*] Now know ye, that I, the said A. B., have remised, released, and for ever quitted claim, and by these presents do remise, release,<sup>4</sup> and for ever quit claim, unto the said (*releasee*,) his heirs, executors, and administrators, all and all manner of action and actions, cause and causes of action, suits, debts, dues, sum and sums of money, accounts, reckonings, bonds, and other specialties, covenants, contracts, agreements, promises,

<sup>4</sup> If the release be by executors to a legatee of leasehold premises specifically bequeathed, recite the will of the testator, the time of his death, and the proving his will, and that the debts have been satisfied, and that the executors had agreed to execute such release of their estate and interest in the said premises as hereinafter is expressed: *The executors* will then release unto (*the devisee*,) his executors, administrators, and assigns, all their estate and interest in the premises.

Release by executors to a legatee of leasehold premises.

variances, controversies, judgments, extents, executions, claims and demands whatsoever, both at law and in equity, which I, the said A. B., now have, or at any time heretofore had, against the said (*releasee*), [*\*for, or by reason, or in respect of, or in anywise relating to, the matters and things hereinbefore mentioned or referred to,*] from the beginning of the world to the day of the date of these presents. In witness, &c.

Release of a  
right in land.

This indenture, made, &c., between, &c. [*Recite the nature of the right claimed.*] And whereas the said A. B. hath agreed to release the aforesaid right or claim, and all other rights and claims, if any, which he hath, or may be supposed to have, in or to the said hereditaments, in consideration, &c. Now, &c., he, the said A. B., hath remised, released, and for ever quitted claim, and by these presents doth, for himself, his heirs, executors, and administrators, remise, &c., unto the said C. D., his heirs and assigns, all the estate, right, title, interest, property, claim, and demand whatsoever, both at law and in equity, which he, the said A. B., now hath, or hereafter shall or may have or claim, or might have had or claimed, in case these presents had not been made, of, in, to, out of, or concerning, the several messuages, &c., hereinbefore particularly mentioned or referred to, or any of them, or any part thereof respectively, under or by virtue of the said in part recited will of the said, &c., (*or as the case may be*), so and in such manner, and to the end and intent that the said A. B., his heirs, executors, or administrators, or any person or persons now or hereafter claiming or deriving title through, under, or in trust for him or them, or any or either of them, shall not and may not, nor can at any time hereafter, by any

\* If the release be from residuary legatees to executors, for or on account of the said recited will, or the residuary bequest therein contained, or in anywise relating to the personal estate and effects of the said testator.

ways or means whatsoever, have, claim, challenge, or demand any estate, right, title, or interest in, to, out of, or concerning the same hereditaments and premises, or any part thereof, and so that all such estate, right, title, and interest, and all actions, suits, proceedings, claims, and demands whatsoever, in respect of, or in relation to the same, shall be henceforth and for ever wholly and utterly extinguished, barred, and excluded. In witness, &c.

*Release of Legacies charged on Lands, and Surrender of the Term created for securing the same.*

This indenture, made, &c., between A. B., C. D., Parties. &c., (*the legatees,*) of the first part; E. F., (*the trustee of the term,*) of the second part; and G. H., (*the owner of the inheritance,*) of the third part. [*Recite* Recital of the will. *the will, whereby a term is created for raising portions, &c., payable to, &c.*] And whereas the said

' If the release be from a younger son under a settlement Release from a younger child, receiving his portion under a settlement. providing portions for younger children, it may run thus:—  
"To all to whom, &c., (*the releasor,*) of, &c., sends greeting. Whereas, under and by virtue of certain indentures of lease and release, dated respectively, &c., and made between, &c., (purporting to be a settlement, &c., which afterwards took effect,) certain messuages, lands, tenements, and hereditaments, situate at \_\_\_\_\_, therein particularly described, were limited to the use of A. B., of, &c., and C. D., of, &c., for the term of one thousand years, upon trust to raise portions for the younger children of the said marriage, in manner therein mentioned and set forth; and whereas the said (*releasor*) is a younger son of the said, &c., and having attained the age of twenty-one years, is entitled to the sum of L. \_\_\_\_\_ as a younger child of the said intended marriage, in pursuance of the trust in the said indenture contained for that purpose; and whereas, E. F., of, &c., (*the heir or owner of the inheritance,*) hath this day paid the said portion or sum of, &c. Now know ye, that the said (*releasor*) doth hereby confess and acknowledge that he hath this day received of and from the said, &c., the sum of, &c., as his portion as a younger child of the said, &c., under and by virtue of the said hereinbefore in part recited indenture of, &c., and in consideration thereof doth hereby for himself, his exe-



Recital of the  
intention to  
pay the lega-  
cies.

(*owner of the inheritance*) is minded and desirous, and hath purposed and agreed forthwith to pay and discharge the several legacies or sums of, &c., so given and bequeathed by the said will of the said, &c., as aforesaid; and the said (*legatees*) have respectively agreed to accept and receive their said several legacies, or sums of, &c., accordingly, and to release and discharge as well the said (*owner of the inheritance*) as the said capital messuage, &c., of and from the same legacies, and all claims and demands in respect thereof; and the said (*trustee of the term*) hath also agreed to join with them, the said (*legatees*), in such release, and also to execute such surrender of the said term of            years as hereinafter contained.

Witnessing  
part.

Now, this indenture witnesseth, that, in pursuance and performance of the said recited agreements, and in consideration of the sum of, &c., by the said E. F. to the said A. B. in hand, &c., and also of the sum of, &c., the respective receipts, &c., they, the said (*legatees*), according to their several and respective estates and interests, have, and every of them hath, remised, released, quitted claim, and discharged, and,

Release.

cutors, and administrators, acquit, release, exonerate, and for ever discharge the said (*heir*) and (*trustees*), their executors, administrators, and assigns, and also the several lands, tenements, and hereditaments so charged with the payment thereof, of and from the same, and every part thereof. And the said (*releasor*) doth hereby, in manner aforesaid, further remise, release, and for ever quit claim unto the said (*trustees*), their executors, administrators, and assigns, and all and every person and persons whom it doth or may concern, all and all manner of action and actions, cause and causes of action, suits, trusts, liabilities, sum and sums of money, claims and demands whatsoever, both at law and in equity, which he, the said (*releasor*), or any person or persons claiming from, under, or in trust for him, now hath, or hereafter can, shall, or may have, claim, challenge, or demand, against them, the said (*trustees*), or either of them, their or either of their executors, administrators, or assigns, or the said messuages, &c., or any part thereof, for or on account of, or in anywise relating to the said portion or sum of, &c., or any part thereof. In witness," &c.

&c., the said G. H., his heirs, executors, and administrators, and assigns; and also the said capital messuage, &c., hereinbefore particularly mentioned and described, and intended to be hereby released, and every part and parcel thereof, of and from the said several legacies or sums of, &c., so given and bequeathed to them, the said [*legatees*,] in and by the said hereinbefore in part recited will of the said, &c., as aforesaid, and each and every of the same legacies, and of and from all interest for, on, or in respect of the said several legacies or sums of, &c., and every of them, and of and from all actions, suits, and demands whatsoever, for, or in respect, or on account of the same several legacies, or sums of money respectively, or otherwise in relation thereto, and each and every of them, the said [*legatees*,] doth hereby severally and for himself and herself, and his and her several and respective heirs, executors, and administrators, covenant, promise, and agree with and to the said G. H., his heirs, executors, administrators, and assigns, that they, the said [*legatees*,] have not, nor hath, any or either of them, heretofore, made, done, permitted, or suffered any act, deed, matter, or thing, whereby or by reason or means whereof they are prevented or incapacitated from releasing the said several legacies, or sums of money so hereby released, or intended so to be, or any of them, or any part thereof respectively, according to the true intent and meaning of these presents, or by reason or means whereof the said messuage, &c., or any part thereof, are or is impeached, charged, or prejudicially affected in title, estate, or otherwise howsoever. And this indenture further witnesseth, that, in pursuance and performance of the said recited agreement, and for the considerations aforesaid, and also in consideration of ten shillings by the said G. H. to the said (*trustee of the term*,) the receipt, &c., he, the said (*trustee*,) at the request and by the direction of the said (*legatees*,) testified by their severally being parties to, and executing these presents, hath assign-

To the intent that the premises may be discharged.

Covenant.

Surrender of the term created for securing the legacies.

Operative  
part.

ed, released, surrendered, and yielded up, and by these presents doth, &c., unto the said G. H., his heirs and assigns, all, &c., or all such part or parts of the said messuage, &c., as are comprised in the said term of        years, in and by the said in part recited will of, &c., as hereinbefore mentioned, with their and every of their rights, members, and appurtenances: and the reversion, &c., and all the estate, &c., to the intent and purpose that the residue now to come and unexpired, of and in the said term of five hundred years created in the said messuage, &c., by the said hereinbefore in part recited will of, &c., herein mentioned; and all other the estate, term, and interest of the said [trustee] therein may be merged and extinguished in the freehold and inheritance of the same premises. [*Add a covenant from the trustee that he hath done no act to incumber, (see p. 89.)*] In witness, &c.

*Release of a Right of Way.*

Parties.

Recital.

Release.

This indenture, made, &c., between A. B., of, &c., of the one part, and C. D., of, &c., of the other part. Whereas the said A. B. is seised in fee-simple in possession of a certain piece or parcel of land, situate, &c., and now in the occupation of, &c., under and subject to a certain right of way through the same piece or parcel of land, to and for the said C. D., his heirs and assigns, with carts, waggons, carriages, horses, and cattle, through and over the same unto a certain messuage, farm, and premises, situate at the estate and inheritance of the said C. D.; and whereas the said A. B., having recently obtained another and more convenient right of way to his said messuage, farm, and premises, hath, in consideration, &c., agreed to release, surrender, and extinguish such right of way over the said piece or parcel of land of the said C. D. as aforesaid. Now, this indenture witnesseth, that, in consideration of the sum of, &c., he, the said A. B., hath remised, released, and surrendered, and by these presents doth, &c., unto the

said C. D., his heirs and assigns, the right of way over and across the aforesaid piece or parcel of land of the said C. D., and all right, title, and claim, which he, the said A. B., hath, for himself, his family, tenants, servants, or otherwise howsoever, to the liberty and privilege of passing to and over the same piece or parcel of land, &c., either on foot or on horseback, or with carts, waggons, carriages, horses, cattle, or otherwise howsoever, to the intent and purpose that the same may be henceforward, and at all times hereafter, extinguished.<sup>5</sup> In witness, &c.

<sup>5</sup> If another right of way is intended to be granted in lieu of the one extinguished: "And whereas the said C. D. is desirous of having the said right of way on the east side of the said piece or parcel of land of him, the said C. D., extinguished, and a right of way given and granted in lieu thereof along the west side of the same piece or parcel of land, to which the said parties have mutually agreed. Now, this indenture witnesseth, that, in consideration of the right of way hereinafter given and granted unto the said A. B., his heirs and assigns, by the said C. D., (and of the sum of, &c.,) he, the said A. B., hath remised, &c., (as above.) And this indenture further witnesseth, that, in consideration of the release hereinbefore made by the said A. B. to the said C. D., as aforesaid, and of 5s., &c., to the said C. D. paid, &c., he, the said C. D., hath given and granted, and by these presents doth give and grant, unto him, the said A. B., his heirs and assigns, the liberty and privilege of passing and repassing to and from the said piece or parcel of land of him, the said A. B., to and over the said piece or parcel of land of him, the said C. D., on the west side thereof, as now marked out and described in the plan in the margin of these presents, on foot or on horseback, or with horses, cattle, carts, and other carriages, at all times of the year, and on all occasions, at his and their will and pleasure; to have, hold, use, and enjoy the said liberty and privilege of passing and repassing on foot, &c., to and over the said piece or parcel of land of him, the said C. D., unto him, the said A. B., his heirs and assigns, for ever. [*Here add any covenants between the parties as to stopping up the old road and the making of the new road.*]

If another right of way is granted in lieu.

To hold, &c.

Proviso in case of obstruction.

*Release from Creditors under a Composition.*

To all to whom these presents shall come, we, the several persons whose names are hereunder written, and seals hereto affixed, creditors of A. B., of, &c., send greeting.

Recital of insolvent's being unable to pay.

Whereas the said A. B., by reason of divers losses and misfortunes, being unable to pay and satisfy to us the whole of our respective demands, hath proposed to pay to us, his several creditors, the sum of 10s. in the pound upon the amount of our respective debts, being the several sums set opposite to our respective names, which we do hereby declare to be the full amount of our respective demands against him, the said A. B., his estate and effects; and we, the said several creditors, have consented to accept such composition, or sum of 10s. in the pound, in full discharge of our respective demands, and to execute such release as hereinafter mentioned and contained. And whereas we, the said several persons whose names are hereunder written, and seals hereto affixed, have respectively received the several sums of money set opposite to our respective signatures hereto, being 10s. in the pound upon the amount of our respective debts, also set opposite our respective signatures hereunder written. Now, therefore, know all men by these presents, that for and in considera-

Release of claims and demands.

Provided always, and it is hereby declared and agreed, by and between the parties to these presents, that, in case the said A. B., his heirs or assigns, or his or their tenants, servants, or workmen, shall, at any time or times hereafter, be obstructed or hindered by him, the said C. D., his heirs or assigns, or any person or persons claiming, or to claim from or under him or them, or any or either of them, in passing or repassing, on foot or on horseback, or with horses, cattle, carts, and other carriages, to or over the said road now made on the east side, &c., then these presents, and every clause, matter, and thing herein contained, shall be and become void, any thing herein contained to the contrary thereof in anywise notwithstanding. In witness," &c.

tion of the several sums of money so respectively paid to us by the said A. B. as aforesaid, the payment and receipt of which said sums of money we do hereby respectively acknowledge, we, the several persons whose names are hereunder written, and seals hereto affixed, creditors of the said A. B. as aforesaid, have, and each and every of us hath remised, released, and for ever quitted claim and discharged, and by these presents do, and each and every of us doth fully and absolutely remise, release, and for ever quit claim and discharge the said A. B., his heirs, executors, and administrators, and his and their lands, tenements, goods, chattels, and effects, of, from, and against all debts, claims, and demands whatsoever, which we now have, or ever had or could claim or demand of, from, and against the said A. B.; and all and singular covenants, conditions, and agreements, actions, suits, and causes of action or suit, which we now have or ever had against the said A. B., for or in respect, or on account of our said several debts. And we, the said several parties hereto, do hereby for ourselves, severally and not jointly, and for our respective heirs, executors, or administrators, covenant and agree to and with the said A. B., his heirs, executors, and administrators, that we and our respective heirs, executors, or administrators, shall and will, at any time hereafter, at the request, and at the costs and charges in all things of the said A. B., his heirs, executors, or administrators, make, do, and execute any such further and other lawful and reasonable acts, deeds, or releases, in the law, for the further and better, more perfectly and absolutely releasing, exonerating, and discharging the said A. B., his executors or administrators, from all claims and demands in respect of our said debts and demands, as by the counsel in the law of the said A. B., his executors or administrators, shall be advised and required. In witness, &c.<sup>a</sup>

For further  
assurance.

<sup>a</sup> Add a schedule of the debts, and composition.

*Release from Creditors to a Bankrupt, he paying a certain sum into the hands of his Assignees for the general Benefit of his Creditors.*

Recital.

To all, &c., we, who have hereunto set our hands and seals, (creditors of A. B., late of, &c., who have severally proved the debts under the fiat in bankruptcy hereinafter recited,) send greeting. Whereas, &c. [*Recite the fiat, the finding, and that the bankrupt has passed his last examination, and state the offer of a composition, and its acceptance by the creditors.*] Now, therefore, know ye, that for the consideration aforesaid, each of us, the said several persons who have hereunto set our hands and seals, creditors of the said A. B. as aforesaid, for himself and herself, his and her heirs, executors, and copartners, doth by these presents remise, release, and for ever discharge the said A. B., his heirs, executors, and administrators, of and from oursaid several debts, and all and all manner of action and actions, &c., which we, and each and every of us, the said creditors, now have or hath, or which each and every of our heirs, executors, or administrators respectively, hereafter may, can, or ought to have, claim, or demand, against the said A. B., his heirs, executors, or administrators, for or by reason of the said several and respective debts to us severally due and owing, or for or by reason of any other matter, cause, or thing whatsoever, from the beginning of the world unto the day of the date of these presents. In witness, &c.

Operative part.

*Release of an Equity of Redemption of a Mortgage in Fee to the Mortgagee as a Purchaser by Indorsement on the Mortgage-Deed.*

Parties.

This indenture, made, &c., between the within-

By section 133 of the 6th Geo. IV. c. 16, the Lord Chancellor is empowered to supersede any fiat after a composition has been accepted by nine-tenths in number and value of the creditors assembled at two different meetings after the bankrupt's last examination.

named (*mortgagor*) of the one part, and the within-named (*mortgagee*) of the other part. Whereas the within-mentioned mortgage debt or sum of L.

was not paid on the day within-mentioned for payment thereof, and the same sum is still due and owing to the said [*mortgagee*,] on the within-written security, but all interest for the same hath been duly paid up to the day of the date hereof, as he, the said [*mortgagee*,] doth hereby acknowledge, and whereas the said (*mortgagee*) hath agreed with the said (*mortgagor*) for the absolute purchase and release of the equity of redemption of and in the

within-mentioned or described. Now, this indenture witnesseth, that, in pursuance of the said agreement in this behalf, and in consideration of the sum of L.

to the said (*mortgagor*) in hand paid by the said (*mortgagee*), at or before the execution of these presents, the receipt of which said sum of L.

, and that the same is in full, for the purchase and release of the equity of redemption of and in the said messuage, &c., the said [*mortgagee*] doth hereby acknowledge, &c., he, the said (*mortgagor*),

Operative  
part.

hath granted, bargained, sold, and released, and by these presents doth, &c., unto the said (*mortgagee*) and his heirs, all, &c., comprised in the within-written indenture, and all the estate, right, title, interest, and equity of redemption, which he, the said (*mortgagor*), now hath or may claim, either at law or in equity, of, in, or to the said messuage, hereditaments, and premises comprised in the within-written indenture, and every part thereof; To have and

Habendum.

to hold the said messuages, &c., hereby released, or intended so to be, unto and to the use of the said (*mortgagee*) and his heirs, absolutely freed and discharged of and from all right of equity of redemption therein. [*Add covenants from mortgagor that he had done no act to incumber, and for further assurance.*] In witness, &c.<sup>k</sup>

Covenants.

<sup>k</sup> The amount due on the mortgage must be estimated as



*Release to an Executor and Trustee under a Will,  
by the Person entitled to receive the residue of the  
Effects, on his coming of Age.*

Parties.

This indenture, made the       day of, &c., between A. D., of, &c., son and heir of C. D., late of, &c., deceased, of the one part; and G. H., surviving executor named in and appointed by the last will and testament of the said C. D., deceased, of the other part. [*Recite the will and the death of the testator, and the probate, and that the executor undertook the burthen and execution of the trusts of the same.*]

Recital of an  
account  
stated.

And whereas the said G. H. hath, since the said A. D. attained his age of 21 years, come to an account with him touching the several sums of money which he hath received from the said testator's real and personal estates, and of the several payments which he hath made thereout, and upon the balance of such account there appears to be due from the said G. H. to the said A. D. the sum of L.       , and that the said A. D. is also entitled to the sum of L.       , &c., bank annuities, heretofore standing in the name of the said C. D., deceased, in the books of the Governor and Company of the Bank of England, and that such balance and bank annuities constitute the whole of the residue of the said testator's personal estate; and whereas the said A. D. having examined and fully investigated the said accounts, and the vouchers, receipts, and other documents relating thereto; and being fully satisfied of the correctness and accuracy of such accounts, he hath proposed and agreed to discharge and relieve the said G. H. from the trusts of the aforesaid will, and to execute such release as hereinafter contained; and whereas, in anticipation thereof, and in furtherance of the said recited agreement, the said G. H. hath paid to the said A. D. the aforesaid sum of L.       , so appearing due to him on the balance part of the consideration with reference to the *ad valorem* stamp.

of such account as aforesaid, and hath also delivered up unto the said A. D. all the aforesaid receipts, vouchers, and documents, as the said A. D. doth hereby acknowledge; and whereas the said A. D. hath also, in further pursuance of the said recited agreement, and at the request of the said A. D., transferred unto him the aforesaid sum of L. 3 per cent. consolidated bank annuities, and the same have been duly accepted by the said A. D., and are now standing in his name in the books of the Governor and Company of the Bank of England. Now, Witnessing this indenture witnesseth, that, in pursuance of the part. said recited agreement in this behalf, and in consideration of the premises, he, the said A. D., hath re- Release. mised, released, exonerated, discharged, and for ever quitted claim, and by these presents doth remise, release, exonerate, discharge, and for ever quit claim, unto the said G. H., his heirs, executors, and administrators, all and all manner of actions and suits, cause and causes of action, and suit debts, dues, accounts, sum or sums of money, claims and demands whatsoever, both at law and in equity, for touching or concerning the personal estate and effects of the said C. D., deceased, or any part thereof, or for touching or concerning any other cause or thing whatsoever, relating to the matters aforesaid, or any of them, in anywise howsoever. [*Add a clause of indemnity similar to the one in p. 236.*] In witness, &c. Indemnity clause to trustee.

\*OBSERVATIONS ON RELEASES.

The several forms of releases given above are chiefly applicable to the release of rights and personal demands. Releases of interests in land, so far as they operate as conveyances, have been treated of elsewhere.

Before preparing a release, it should be clearly ascertained whether it is the intention of the parties that it should operate as a general release, or be

confined to some particular transaction or class of transactions. In the former case, it is better not to notice, either by way of recital or otherwise, any one particular debt or transaction, as such recitals have sometimes been held to limit and qualify a release which in other respects purported to be general. If any recital is introduced, it should be simply with the view of showing the agreement or other inducement upon which the release is founded; but where, on the other hand, the release is intended to have but a limited operation, either as being confined to some particular rights or demands, or to those rights or obligations which either party may have or be liable to jointly with any others, or in any particular character, as executor, trustee, &c., great care should be taken to confine the release to such limited object. This is best done by fully reciting the agreement upon which the instrument is founded, and distinctly stating the particular transactions to which it is intended to be confined. With this view, it will sometimes be found most convenient (especially where the excepted transactions are fewer in number than those to which the release is intended to apply) to let the instrument be made general in its terms, introducing an exception or proviso (to which effect will be given<sup>1</sup>) that the release is not intended to apply to such and such transactions, or to such rights as the releasor may have jointly with any others, or which he may have against the releasee jointly with any third parties, or in any particular character.

The propriety of this precaution will be obvious, when it is considered that a release by one of several creditors,<sup>2</sup> or other persons jointly entitled to any debt or right, operates as a release by all, and that a

<sup>1</sup> 1 Lord Raym. 235; *Taylor v. Homersham*, 4 M. and S. 423; *Beaumont v. Brainley*, Turn. and Russ. 52.

<sup>2</sup> *Lolley v. Forbes*, 4 J. B. Moore, 448.

<sup>3</sup> *Bailey v. Lloyd*, 7 Mod. 250; *Co. Litt.* 232, a.

release to one of several debtors is a release to them all: Thus, if a partnership of several persons is indebted to another partnership, a release by one of the latter to one of the former might be pleaded as an estoppel to any action which might afterwards be brought for such debt between any of the parties or their representatives.

A husband may release a debt which was due to his wife before marriage, or any personal demand of hers which he has a present right to enforce.\* One partner may release a debt owing to the firm.† The release of one of two or more executors or administrators is good against the others;‡ and, in short, the release of any one of several parties, jointly interested,§ is, as before mentioned, (even though they should be but trustees,) equivalent to a release by all.

A release to two joint debtors would, unless qualified, extend to demands which the releasor might have against each separately;¶ and a release by a person who is an executor or administrator, is a release of the debts and rights which he has in his own and in his representative character.\*

In order to save circuity of action, a covenant not to sue operates as a release to the covenantee, in cases where he is solely liable;‡ but, in other cases,

\* Clayton v. Kinaston, 1 Lord Raym. 420; Rex v. Bayley, 1 Car. and P. 435.

† Miles v. Williams, 1 P. Wms. 253.

‡ Ex parte Gardom, 15 Ves. 286, and see Hawkshaw v. Parkins, 2 Swanst. 2.

§ Dyer, 23, b; Jacomb v. Halcomb, 2 Vez. 267.

¶ Arton v. Booth, 4 J. B. Moore, 192; Furnival v. Weston, 7 lb. 356.

\* Bayley v. Lloyd, 7 Mod. 250; 1 Selw. N. P. 570, 9th Ed.

‡ Thorpe v. Thorpe, Lord Raym. 285; Shep. Touch. 344.

† 1 Lord Raym. 435.

¶ Hutton v. Eyre, 6 Taunt. 289, and 1 Marsh. 603; Dean v. Newhall, 9 T. R. 168.

it has not the operation of a release in all respects. It leaves the remedy against any parties jointly liable with the covenantee unaffected ;\* and, therefore, if a creditor should wish to release one of several debtors, without forfeiting his rights against the others, it may be effected by means of a covenant with the particular debtor not to sue him. The effect of such a covenant will be to give the covenantee a remedy by action against the covenantor, in the event of his being put to any expense or trouble in consequence of any breach of it ; but as such a covenant cannot effect the rule of law requiring all persons jointly liable to be jointly sued, the covenantor is not considered to have precluded himself by such covenant from suing the other debtors, though it may be necessary that the covenantee should be joined for form sake ; but it would be the covenantor's duty not only not to take out any execution against the covenantee, but to indemnify him against any costs which he may incur in consequence of being so joined.'

A covenant not to sue has not the operation of a release even in favour of the covenantee, unless it is absolute and unqualified as to time." A covenant, therefore, not to sue for a year, or some other limited period, could not, it would appear, be pleaded in bar to an action, even if brought within such limited time ; but the covenantee would be compelled to resort to a cross action for an indemnity against any loss which he might sustain in consequence of such breach of covenant.

An executory agreement by parol may be released or discharged by parol,\* but an instrument under

\* *Hutton v. Eyre*, 6 Taunt. 289, and 1 Marsh. 603 ; *Dean v. Newhall*, 9 T. R. 168.

† *Lolley v. Forbes*, 4 J. B. Moore, 448.

\* *Lacy v. Kinaston*, 1 Lord Raym. 690 ; *Carvell v. Edwards*, Carth. 210.

\* *Knight v. Chaplain*, 2 Sid. 77.

seal<sup>b</sup> will be necessary to release any cause of action once accrued, or a debt or right due on bond or other specialty,<sup>c</sup> or any debt or right of a higher character, as a right in land, or rent, whether due upon a lease by deed or not.<sup>d</sup>

A release, like other deeds, is taken most strongly against the party whose deed it is ;<sup>e</sup> but if it clearly appears, from the recitals or otherwise, that the release, if so construed, would be contrary to the intention of the parties, it will be confined to the object for which it was executed.<sup>f</sup>

No consideration is, at law, necessary to give validity to a release ; but if it is in any way tainted with fraud, it will be void both at law<sup>g</sup> and in equity.<sup>h</sup>

Where any deed or other instrument is executed, for the purpose of releasing, surrendering, or compromising any doubtful, latent, or remote right or interest, it is important, in order to its validity in equity, that the party executing such release or compromise should do so with a full knowledge<sup>i</sup> of the nature, extent, and value of the rights and interests, or supposed rights or interests, which he is about to release or transfer ; and in order, therefore, to pre-

<sup>b</sup> *Rogers v. Payne*, 2 Wils. 376 ; *Neale v. Sheffield*, Cro. Jac. 254 ; *Reeves v. Brymer*, 6 Ves. 516.

<sup>c</sup> *Rogers v. Payne*, 2 Wils. 376 ; *Sellers v. Bickford*, 8 Taunt. 31, S. C. 1 J. B. Moore, 460 ; *Thompson v. Brown*, 1 J. B. M. 358.

<sup>d</sup> *Co. Litt.* 264 ; *Thetford's Case*, Leon, 283.

<sup>e</sup> *Thorpe v. Thorpe*, 1 Raym. 235.

<sup>f</sup> *Solley v. Forbes*, 4 J. B. M. 448 ; *Taylor v. Homersham*, 4 M. and S. 423 ; *Beaumont v. Bramley*, Turn. and R. 41.

<sup>g</sup> *Arton v. Booth*, 4 J. B. M. 192 ; *Manning v. Cox*, 7 Id. 617 ; *Legh v. Legh*, 1 Bos. and Pul. 447 ; see also *Crook v. Stephen*, 9 L. S. N. S. 209, C. P.

<sup>h</sup> *Bowen v. Kirwan*, 1 Ll. and G. 47 ; *Butler v. Mulvihill*, 1 Bli. 137 ; *Daubeny v. Cockburn*, 1 Mer. 643 ; *Say v. Barwick*, 1 Ves. and Beam. 195.

<sup>i</sup> *Naylor v. Winch*, 1 Sim. and Stu. 564 ; *Gordon v. Gordon*, 3 Swanst. 467.

vent any objections on the ground of want of such knowledge, it is advisable to show, by way of recital or otherwise, on the face of the deed or instrument, the nature and extent] of the rights and interests, whether real or supposed, admitted or contested, which are intended to be released or otherwise dealt with, and also the consideration and inducement for which such release, compromise, or transfer, is made. Though such recital would not prevent a party from obtaining the aid of a court of equity, if he could show that, through his own want of skill, or the fraud of the other party, he had in fact executed the release in ignorance of the nature and effect of the transaction,<sup>1</sup> yet the fact of its nature and object appearing on the instrument itself would diminish the probability of the existence of such ignorance or fraud, and make the proof of it much more difficult.

These last points have been previously brought under the reader's consideration in reference to deeds in general; but their peculiar applicability to deeds of release appeared to call for a recurrence to them in this place.

The observations before made with reference to the release of one of several debtors operating as a release of all, apply equally, whether the release is by deed or by act of law.<sup>2</sup> Thus, if one of several obligors in a bond is appointed executor of the obligee, all his co-obligors are at law discharged with him, in the event of his proving<sup>3</sup> whether appointed solely or in conjunction with others; and so an intermarriage between any one of several joint debtors and creditors is a release to all.<sup>4</sup>

<sup>1</sup> *Baker v. Paine*, 1 Vez. 456; *Prickett v. Loggon*, 14 Ves. 215; *Ramsbottom v. Gosden*, 1 Ves. and B. 168; *Naylor v. Winch*, 1 Sim. and St. 564.

<sup>2</sup> *Cheetham v. Ward*, 1 Bos. and Pul. 633; *Freakley v. Fox*, 9 B. and C. 130.

<sup>3</sup> *Rawlinson v. Shaw*, 3 T. R. 557.

<sup>4</sup> Co. Litt. 264, b.

Though the appointment of a debtor as the executor of a will operates as a release, yet a release by will in itself is inoperative as a legal bar to a suit, though effect will be given to it in the character of a legacy.

The usual words in a release are—" *Remise, release, and quit claim*;" but it is not necessary that they should be used.\* " *Remise, release, exonerate, and discharge*," and " *give, grant, and renounce*," are two other forms given in Shepherd's Touchstone, 326.

A release, says Littleton, in the 508th sect. of *all manner of demands*, " is the best release to him to whom the release is made that he can have, and shall enure most to his advantage; for by such release of all manner of demands, all manner of actions, reals, personals, and actions of appeale, are taken away and extinct, and all manner of executions are taken away and extinct."

\* Parsons v. Howard; Cases temp. Hardwicke.

† Co. Litt. 264, b.



## \*CHAPTER XXXV.

### SETTLEMENTS ON MARRIAGE.

*Settlement of a Reversionary Interest in a Sum of Money to which the Lady is entitled under her Father's Marriage Settlement ; and of a Sum of Stock, the Property of the Gentleman, containing a Covenant for the Settlement of any future Personal Property of the Lady's, and a Covenant by her Father for the payment during his Life to the Trustees of an annual Sum of Money.*

THIS indenture, made the            day of            between S. R. W. of the first part ; L. C. of the second part ; C. R. C. of the third part ; and [trustees] of the fourth part. Whereas the said L. C., as one of the children of the said C. R. C. and L. L. his wife, is under the settlement made on the marriage of her said father and mother, bearing date, &c., entitled to one equal eleventh part or share in reversion expectant, and to take effect in possession on the decease of her said father, of and in the sum of L.            which is now vested in mortgage on a certain farm, lands, and hereditaments, situate at            being secured thereon by certain indentures, &c. : And whereas the said S. R. W. is absolutely entitled to the sum

of L. three and a half per cent. consolidated bank annuities heretofore standing in his own name in the books of the Governor and Company of the Bank of England: And whereas a marriage hath been agreed upon, and is intended to be shortly had and solemnized between the said S. R. W. and L. C.: And where-  
as upon the treaty for the said intended marriage, it was agreed that the said one-eleventh part or share to which the said L. C. is so entitled in reversion expectant as aforesaid, of and in the aforesaid sum of L. , and of the stocks, funds, or securities in or upon which the same are or may be invested, and the aforesaid sum of L. bank annuities should be respectively assigned to and vested in the said [*trustees*,] upon and for the several trusts, ends, intents, and purposes hereinafter contained. And whereas the said C. R. C. hath also proposed and agreed to pay to the trustees of these presents, during his life, if they, the said S. R. W. and L. C., or either of them, shall so long live, the annual sum of L. 100, and to enter into such covenant for the payment thereof, as and in manner hereinafter contained.<sup>a</sup> And whereas, in pursuance of the said recited agreement, the said S. R. W. hath transferred the said sum of L. bank annuities into the names of them, the said [*trustees*,] in the books of the Governor and Company of the Bank of England. Now, this indenture *witnesseth*, that, in further pursuance of the said recited agreement in this behalf, and in consideration of the said intended marriage, she, the said L. C., with the privity and approbation of the said S. R. W., (testified by his being a party to, and executing these presents,) hath bargained, sold, assigned, transferred,

Recital of  
agreement for  
settlement.

Assignment  
by the lady.

<sup>a</sup> If it is so intended, add, " And it hath also been agreed, that the said S. R. W. and L. C. shall enter into such covenant for the settlement of all such moneys and other personal estate of the amount or value hereinafter specified, as the said L. C., during her life, or the said S. R. W. in her right, may become possessed of, or entitled to, by gift, bequest, or otherwise, as hereinafter contained."

and set over, and by these presents doth, &c., unto the said [*trustees,*] their executors, administrators, and assigns, all that the said one equal eleventh part or share to which the said L. C., under and by virtue of the said recited indenture of settlement is now entitled in remainder or reversion expectant on the decease of her said father, the said C. R. C., of and in the said sum of L. , and of and in the said stocks, funds, and securities, in or upon which the same sum is now or may hereafter be invested, and all other the moneys, stocks, funds, and securities, (if any,) to which the said L. C. is now entitled in remainder or reversion expectant as aforesaid, or otherwise, under or by virtue of the same settlement; and all interest, dividends, and annual produce from and after the decease of the said C. R. C. to accrue, due upon, or in respect of the same, and all the right, title, interest, property, claim, and demand whatsoever of her, the said L. C., in, to, or out of the same parts, shares, and premises respectively; together with all powers, remedies, and means whatsoever requisite or necessary, for suing, for recovering, receiving, and giving effectual receipts, releases, and discharges for the same respectively; To have, hold, receive, and take the said part, share, moneys, interest, dividends, and other premises hereby assigned, or intended so to be, unto the said [*trustees,*] their executors, administrators, and assigns, absolutely, but nevertheless upon, and for the trusts, intents, and purposes hereinafter expressed and declared of and concerning the same: That is to say, upon trust for her, the said L. C., her executors, administrators, and assigns, until the said intended marriage shall be had and solemnized, and in case such marriage shall be had and solemnized upon trust, that they, the said [*trustees,*] or other the trustees or trustee, for the time being, of these presents, shall and do, on the decease of the said C. R. C., or whenever otherwise the same shall become recoverable, recover and get in the same parts or share money and premises, and shall and do, with

Trusts for investment.

the consent of the said S. R. W. and L. C., or the survivor of them, or after the decease of the survivor, then at their and his own discretion, lay out and invest the same part, share, moneys, and premises, when so recovered and received as aforesaid, in their or his names or name, in some or one of the parliamentary stocks or funds of Great Britain, or upon government or real securities in England or Wales, and shall and do stand possessed of and interested in the same part, share, moneys, and premises, and the stocks, funds, and securities, wherein or upon which the same shall be invested, and the dividends, interest, and annual produce thereof, upon and for the trusts, intents, and purposes hereinafter expressed and declared of and concerning the same: And it is hereby agreed and declared between and by the parties hereto, that the said [*trustees,*] their executors, administrators, or assigns, or other the trustees or trustee for the time being, of these presents, shall and do stand possessed of and interested in the said sum of L.      bank annuities, and the interest, dividends, and annual proceeds thereof, upon trust for the said S. R. W., his executors, administrators, and assigns, until the said intended marriage shall be had and solemnized; and from and after the solemnization thereof, upon and for the several trusts, ends, intents, and purposes hereinafter declared and contained of and concerning the same. And it is hereby also further agreed and declared between and by the parties hereto, that they, the said [*trustees,*] their executors, administrators, or assigns, or other the trustees or trustee, for the time being, of these presents, shall and do, from and after the solemnization of the said intended marriage, stand possessed of and interested in the said sum of L.      bank annuities, so transferred into the names of them, the said [*trustees,*] in the books of the Governor and Company of the Bank of England, as aforesaid, and also of and in the said one-eleventh or other part or share of and in the said sum of L.      hereby assigned, or in-

Trusts.

Lady for her  
separate use.

tended so to be, and of and in the stocks, funds, and securities wherein or upon which the same shall or may be invested, but subject to the life estate of the said C. R. C. therein,<sup>\*</sup> and the interest, dividends, and annual produce of the same several trust premises respectively, Upon and for the trusts, ends, intents, and purposes hereinafter declared and contained of and concerning the same; that is to say, upon trust, &c. [*The usual trusts in settlements of small properties are for the husband for life, remainder to the wife for life. See first form in page 55; but if the husband is liable to the bankrupt laws, it may be advisable to give the wife the first life estate limited to her separate use, in which case proceed as follows.*] Upon trust during the joint lives of the said S. R. W. and L. C. his intended wife, from time to time, as the same shall become due and payable, to pay, &c., [*as in second form in page 55,*] and from and after the decease of either of them, the said S. R. W. and L. C., who shall first die, upon trust during the then remainder of the natural life of the survivor of them, to pay unto or authorize and empower him, or her, or his or her assigns, to receive and take the dividends, interest, and annual produce of the said trust funds, moneys, and premises, when and as the same shall become due and payable, and from and after the decease of the survivor of them, the said S. R. W. and L. C., then it is hereby agreed and declared, that the trustees or trustee, for the time being, of these presents, shall and do stand possessed of

<sup>\*</sup> If the produce to arise from the sale of any real or leasehold estate conveyed by another deed is also comprised, insert herein, "and of and in the moneys to arise from the sale of the messuage lands, and other real estate, hereditaments, and premises comprised in the said recited indenture of even date herewith, and of and in the stocks, funds, and securities wherein or upon which the same moneys and premises may be respectively vested;" in such case the indenture referred to should be shortly recited. For a form of it, and observations on the use of it, see *post*. 640 and 646.

and interested in the said trust funds, moneys, and premises, and the dividends, interest, and annual produce thereof, Upon trust for all and every, or any one or more exclusive of the other or others, of the child or children, [*'grandchild or grandchildren,*] of the said intended marriage, [(such grandchildren being born within the limit for such purpose allowed by law,)] in such parts, shares, and proportions, at such age or ages, days or times, and subject to such conditions, restrictions, charges, provisions, and limitations over, for the benefit of some or one of such children, [*or grandchildren,*] as they, the said S. R. W. and L. C., his said intended wife, at any time or times, during their joint lives, by any deed or deeds, writing or writings, with or without power of revocation, and new appointment to be sealed and delivered by them both, in the presence of, and attested by, two or more credible witnesses, shall jointly direct or appoint; and in default of such joint direction or appointment, or so far as any such shall not extend, then as the survivor of them, the said S. R. W. and L. C. shall, at any time or times, after he or she shall become such survivor, by any deed or deeds, writing or writings, with or without power of revocation, and new appointment to be by him or her sealed and delivered in the presence of, and attested by, two credible witnesses, or by his or her last will and testament in writing, or any codicil or codicils thereto, direct or appoint; and in default of such direction or appointment, or so far as any such shall not extend, then upon trust for all and every such child or children of the said intended marriage as, being a son or sons, shall live to attain the age of twenty-one years; or, being a daughter or daughters, shall live to attain that age, or be married, whichever shall first happen; and if there shall be two or more such children, then equally to be divided between or among them, share

Children according to appointment.

In default of appointment.

\* These words would authorize an appointment to the children of a deceased or profligate child.

Hotchpot  
clause.

Power for  
maintenance.

and share alike, as tenants in common ; and in case there shall be only one such child, who, being a son, shall live to attain the age of twenty-one years, or, being a daughter, shall live to attain that age or be married, then upon trust for such only child ; and the said shares or portions to be respectively paid or transferred at the time, the same shall respectively become vested, unless the same shall happen in the lifetime of either of them, the said S. R. W. and L. C., and then, in such case, immediately upon the decease of the survivor of them : But in case any child of the said intended marriage [or the issue of any such child] shall take a share or shares of and in the said trust funds, moneys, and premises, by virtue of or under any appointment to be made by the said S. R. W. and L. C., or the survivor of them, in pursuance of the powers aforesaid, or either of them, then such child shall be entitled to no share of and in the unappointed or remaining part of the said trust funds, moneys, and premises, until he or she shall have brought such share or shares so appointed to him or her, [or his issue,] into hotchpot, or shall have accounted for the same accordingly, unless the person or persons making such appointment shall declare a contrary intention in writing : And if, at the time of the decease of the survivor of them, the said S. R. W. and L. C., his said intended wife, or at any time afterwards there shall be any child or children [grandchild or grandchildren] of the said intended marriage, who, under the trusts aforesaid, or under any appointment to be made by virtue of the same trusts, shall be presumptively or absolutely entitled to a portion, share, or shares, which shall not, for the time being, under or according to such trusts or appointments, be actually payable, then upon further trust, that they, the said trustees or trustee, for the time being, of these presents, shall and do (unless the contrary shall be directed in any such appointment as aforesaid) pay or apply the annual income of the presumptive or then vested portion or share

of every such child, [or grandchild,] or so much of such annual income as the said trustees or trustee, for the time being, shall, in their or his discretion, think proper, for or towards the maintenance, support, and education of such child, [or grandchild,] until such his or her portion or share shall become payable, or he or she shall previously die; and that it shall be lawful for such trustees or trustee, either to apply such annual income to the purposes aforesaid themselves, or in their or his discretion to pay the same to the guardian or guardians, for the time being, of such child [or grandchild] respectively, for the purposes of being so applied, without being liable to see to the application thereof, or to require any account of the application of the same:

Provided always, that if, in any year or years, the said trustees or trustee, for the time being, of these presents, shall, in pursuance of the said lastly mentioned trust, apply for the maintenance and education of any such child or children [grandchild or grandchildren] less than the annual income to which he, she, or they shall be respectively entitled as aforesaid, then, and in such case, and so often as the same shall happen, the surplus of such annual incomes shall (unless the contrary be directed by any such appointment as aforesaid) be invested in manner aforesaid, and be accumulated, and go in augmentation of the portion, or share or shares, from which the same shall have arisen, and be held under and subject to the same trusts, powers, and provisos in all respects as such original portion, share, or shares respectively, yet so nevertheless that it shall be lawful for the said trustees or trustee, for the time being, to apply the surplus of the annual income of the portion, share, or shares of any such child or children, [grandchild or grandchildren,] in any preceding year or years, for or towards and in increase of his, her, or their maintenance and education respectively, in any succeeding year or years: Provided always, &c. *[insert*

Surplus maintenance clause.

Advancement.

*power of advancement, see page 62, with the follow-*



Trusts in default of children.

*ing addition if desired ;*] and that it shall be lawful for such trustees or trustee either to apply the moneys so to be advanced as aforesaid, in or for such purposes themselves, or otherwise, in their or his discretion, to pay the same to the father or other guardian of such son, [or grandson respectively,] for the purpose of being so applied, without being liable to see to the application thereof, or require any account of the application of the same. But in case there shall be no child of the said intended marriage, who, being a son, shall live to attain the age of twenty-one years, or, being a daughter, shall live to attain that age, or be married, then it is hereby agreed and declared, that the trustees or trustee, for the time being, of these presents, shall and do, but without prejudice to any of the trusts aforesaid, or to any appointment to be made thereunder as aforesaid, stand possessed of, and interested in, the said trust funds, moneys, and premises, or so much thereof as shall not have become vested in any child or children [grandchild or grandchildren] of the said intended marriage, by virtue of any appointment to be made under any of the powers hereinbefore contained, and as shall not have been applied for the advancement of any of the sons [or grandsons] of the said intended marriage, under the provision or power hereinbefore in that behalf contained, upon the trusts following; that is to say, as, to, for, and concerning the said reversionary or expectant one-eleventh part or share of the said L. C. of and in the aforesaid sum of L.      hereinbefore assigned, or intended so to be, and the stocks, funds, and securities wherein or upon which the same may for the time being be invested upon trust, if the said L. C. shall happen to survive her said intended husband, for her, the said L. C., her executors, administrators, and assigns absolutely; but if the said L. C. shall happen to die in the lifetime of her said intended husband, upon trust for such person or persons, for such interests or interest, and for such ends, intents,

As to lady's property.

and purposes, and under and subject to such charges, powers, and provisoes as the said L. C., notwithstanding her coverture by her last will and testament in writing, or any writing in the nature of, or purporting to be her last will and testament, or any codicil or codicils thereto, shall at any time or times after the solemnization of the said intended marriage direct or appoint; and in default of any such direction or appointment, or so far as any such direction or appointment shall not extend, then upon trust for such person or persons, as under or by virtue of the statute for distribution of intestates' effects should or would, at the time of the decease of the said L. C., have been entitled to her personal estate as her next of kin, in case she had died intestate, and without having been married; and if there shall be two or more such persons, then upon trust for them, in the same manner as they would have been entitled to such personal estate under such statute: And as, to, for, concerning the aforesaid sum of L. three and a half per cent. consolidated bank annuities, and all other the trust moneys, stocks, funds, and premises herein comprised, but subject to the trusts hereof, upon trust for the said S. R. W., his executors, administrators, and assigns, for his and their own absolute use and benefit. And, in pursuance of the said recited agreement in this behalf, and in consideration of the said intended marriage, the said C. R. C. doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to the said [*trustees,*<sup>1</sup>] their executors and administrators, and also with the said S. R. W., his executors and administrators, by these presents, in manner following; (that is to say,) that, in case the said intended marriage shall take effect, then and in such case he, the said C. R. C., shall and

Gentleman's  
property.

Covenant by  
father to pay  
annual sum to  
trustees.

<sup>1</sup> If the annual sum is to be payable for the husband's benefit, and during his life alone, the covenant should be with him without the intervention of the trustees.

will, during the remainder of his life, or during such part thereof as the said S. R. W. and L. C., or either of them, shall live, well and truly pay, or cause to be paid, unto the said [*trustees,*] their executors or administrators, or other the trustees or trustee, for the time being, of these presents, one annuity or annual sum of L.100, by equal half-yearly payments, on the day of                      and the                      day of                      in every year, free and clear of and from all deductions in respect thereof, the first payment thereof to begin and be made on such of the said days as shall happen next after the solemnization of the said intended marriage: And it is hereby agreed, that the trustees or trustee, for the time being, of these presents, shall stand possessed of, and interested in, the said annuity or annual sum of L.100, and the half-yearly payments thereof, upon and for such and the same ends, intents, and purposes, as are hereinbefore declared and contained, of and concerning the interests, dividends, or annual income of the hereinbefore mentioned trust moneys, funds, and premises. [*Add power to trustees to vary securities, p. 61; to give receipts, p. 58; and for appointment of new trustees, p. 69; and a provision for their indemnity, p. 77.*] "And the said S. R. W. and L. C., in pursuance of the said recited agreement in this behalf, do hereby, jointly and separately, and for their several and respective heirs, executors, and administrators, covenant, promise, and agree, with and to the said [*trustees,*] their executors, administrators, and assigns, in manner following; that is to say, that if, at any time after the solemnization of the said intended marriage, and during the life of the said L. C., any moneys or other personal estate of the value or amount, at any one time, of not less than L.                      , shall be given or bequeathed, or come to or devolve upon the said L. C., or the said S. R. W. in her right, then, and

Powers to trustees.

Covenant for settlement of lady's after acquired personality.

" This clause should only be inserted if there is an agreement for it.

so often as the same shall happen, the said L. C. and S. R. W. respectively, and their respective executors and administrators, shall and will, at the expense of the said S. R. W., his executors and administrators, make, do, and execute all such acts, deeds, assignments, and assurances in the law whatsoever, as the said [*trustees*] or the survivor of them, or the executors and administrators of such survivor, or his, her, or their counsel in the law, shall think proper, for effectually vesting such moneys or other personal estate in the said [*trustees,*] or other the trustees or trustee, for the time being, of these presents, upon and for such and the same trusts, intents, and purposes as are hereinbefore expressed and declared, of and concerning the said reversionary or expectant one-eleventh part or share of and in the said sum of L.

, so hereby assigned, or intended so to be, as aforesaid, [*or if all the properties are settled upon the same trusts say,* "the said trust moneys, funds, and premises hereinbefore mentioned,"] and the interest and dividends thereof, or as near thereto as the deaths of parties, and other circumstances of the case, will admit: Provided also, and it is hereby lastly agreed and declared between and by the parties hereto, that the provision hereby made for the said L. C. as aforesaid shall be, and she doth hereby agree to accept the same as and for her jointure, and in lieu and full satisfaction of and for her whole dower or thirds at the common law, or by or on account of customary free-bench or widow's-part, which she can or may, or otherwise could or might have claim or demand in or out of all and every the freehold, copyhold, or customary hereditaments and premises whereof or whereto the said S. R. W. now is, or at any time or times, during the said intended coverture, shall be seised or entitled for any estate of or to which dower or free-bench is incident. In witness, &c.

Agreement to  
bar dower.

*Conveyance of a small Estate the Property of the Gentleman, previous to Marriage, to the Trustees of the Marriage Settlement, upon Trusts for Sale, and to stand possessed of the Moneys upon the Trusts declared by the Settlement.*

This indenture, made the                      day of                      A. D. 184 , between J. M. of [*the gentleman,*] of the first part, M. C. [*the lady,*] of the second part, and [*trustees,*] of the third part ; (*after the previous recitals as to the title of the premises, proceed as follows :*) And whereas a marriage hath been agreed upon, and is intended to be shortly had and solemnized between the said J. M. and M. C. ; and whereas, upon the treaty for the said intended marriage, it was agreed, that the                      hereditaments and premises comprised in the said                      should be conveyed and assured unto the said [*trustees,*] their heirs and assigns, upon and for the trusts, intents, and purposes hereinafter expressed and declared of and concerning the same. Now, this indenture witnesseth, that, in pursuance of the said recited agreement in this behalf, and in consideration of the said intended marriage ; [*add a nominal consideration, and then convey the premises to the trustees in the ordinary mode applicable to the particular property, and after the limitation in the habendum proceed as follows :*] But nevertheless upon and for the several trusts, intents, and purposes hereinafter expressed and declared of and concerning the same ; that is to say, upon trust for the said J. M., his                      and assigns, until the said intended marriage shall be had and solemnized, and from and after the solemnization thereof, upon trust, that they, the said [*trustees,*] or other the trustees or trustee, for the time being, of these presents, do and shall, at such time or times, during the lives of the said J. M. and M. C., his intended wife, or the survivor of them, as they, the said J. M. and M. C., or the survivor of them, shall in that behalf direct by any writing or writings under his, her, or their hands or

hand ; and after the decease of the survivor of them, at such time or times as to the trustees or trustee, for the time being, shall seem expedient, absolutely sell and dispose of, &c. (*See first form in page 54.*) And it is hereby agreed and declared, that the trustees or trustee, for the time being, of these presents, shall stand and be possessed of the clear moneys to arise or be produced by any sale or sales which shall be made in pursuance of the trusts hereinbefore contained, and of the rents and profits of the said hereditaments and premises, until the same shall be sold as aforesaid, after payment of all the costs, charges, and expenses which shall be occasioned by or incident to the execution of the trusts of these presents, upon and for such trusts, intents, and purposes, and subject to such powers, provisoes, declarations, and agreements, as are or shall be expressed concerning the same, in and by an indenture already prepared and engrossed, and bearing, or intended to bear, even date with these presents, and made, or intended to be made, between, &c. [*Add power to trustees to give receipts, see p. 57, and (where it is not intended to sell the premises immediately) power to lease, and a power of changing trustees similar to the one given in the contemporaneous settlement, see p. 69.*] In witness, &c.

*Settlement before Marriage of real Estates upon the Gentleman and Lady for their Lives, with remainder (subject to appointment by them) to their Children in tail.*

This indenture, made, &c., between J. C. or the first part; H. T. of the second part; and E. C. and H. B. of the third part. Whereas the said J. C. is seised or entitled in fee-simple of or to the messuage, farm lands, and hereditaments hereinafter described, and intended to be hereby granted and released; and whereas a marriage hath been agreed upon, and is intended to be shortly had and solemnized between the said J. C. and H. T., and upon the treaty for the said intended

marriage, it was agreed that the said messuage, farm lands, and hereditaments, should be conveyed and assured to the said E. C. and H. B., and their heirs, to the several uses upon and for the several trusts, intents, and purposes hereinafter expressed and declared, of and concerning the same. Now, this indenture witnesseth, that, in pursuance of the said recited agreement in this behalf, and in consideration of the said intended marriage, and also in consideration of the sum of five shillings of lawful British money, by the said E. C. and H. B. to the said J. C. in hand now paid, the receipt whereof is hereby acknowledged, he, the said J. C., with the privity and consent of the said H. T., his said intended wife, testified by her executing these presents, hath granted, bargained, sold, released, and confirmed, and by these presents doth, &c., unto the said E. C. and H. B., (in their actual possession, &c., *see p. 38.*) and to their heirs, all, &c., together with all houses, &c., and the reversion, &c., and all the estate, &c., (*see p. 41.*) To have and to hold the said messuage, farm lands, and other hereditaments hereby granted and released, or intended so to be, with their appurtenances, unto the said E. C. and H. B., their heirs and assigns, to the use of the said J. C., his heirs and assigns, until the said intended marriage shall be had and solemnized, and from and after the solemnization thereof, to the use of the said J. C. and his assigns, for the term of his natural life, without impeachment of or for any manner of waste, and from, &c., [*add limitation to E. C. and H. B. during the life of J. C. to support contingent remainders, see p. 50,*] and immediately after the decease of the said J. C., to the use of the said H. T. and her assigns for the term of her natural life, without impeachment of or for any manner of waste, as and for her jointure, and in lieu, bar, and full satisfaction of and for all dower and thirds at the common law, &c., [*see ante, p. 639,*] and from, &c., [*add limitation to the same trustees during the life of H. T. to support contingent remainders, ante, p. 50,*] and immediately after the decease

of the survivor of them, the said J. C. and H. T. his intended wife, to the use [*of children, according to appointment of gentleman and lady, or survivor, see p. 53,*] and in default of such direction, limitation, or appointment, and, in the meantime, subject thereto, and to such part or parts of the said messuage, farm lands, and hereditaments, whereof no such direction, limitation, or appointment shall be made, to the use [*if it is intended to give the estate in default of appointment to the first and other sons in tail, with remainder to the daughters as tenants in common, the forms in p. 51 will come in here ; but if it is intended that, in default of appointment, all the sons, or all the children, should take jointly in tail or otherwise, the form of limitation to the daughters may be used by substituting for daughters the word "sons" or "children," and his for her, &c. ;*] and in default of such issue, to the use of the said J. C., his heirs and assigns for ever, [*if the property be the lady's, and it is intended that, in default of issue, it should return to her family, or be at her disposal, the limitation in default of issue should be to such uses as she may appoint, see p. 52, and in default of appointment to her in fee.*] Provided always, &c. [*Add power to lease, see p. 63 ; to sell or exchange, see p. 65 ; and lay out the moneys to arise thereby, p. 67 ; to give receipts, pp. 57, 58 ; and power to appoint new trustees, p. 69 ; and proviso for indemnity of trustees, p. 77 ;\* and covenants by gentleman with trustees for quiet enjoyment, and for further assurance, see pp. 87 and 88.*] In witness, &c.

*Trust in a Settlement of the Property of the Lady, for Gentleman, till Bankruptcy, Insolvency, or attempt to alienate.*

Upon trust, that they, the said [*trustees,*] or other

\* This proviso may be omitted, if brevity is desired, trustees being entitled to all proper indemnities in the absence of such a provision.



the trustees or trustee, for the time being, of these presents, shall and do pay unto, or permit and suffer the said A. B. to receive and take for his own use and benefit, [the interest, dividends, and annual produce of the said trust-moneys, stocks, and premises; (or, in case of real estate,) the rents and profits of the said messuages, lands, and hereditaments,] during his life, or until he shall be found and duly declared a bankrupt, or shall take the benefit of any act or acts of Parliament now in force, or at any time hereafter to be made for the relief of insolvent debtors, or shall make, do, execute, permit, or suffer any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof, [the same interest, dividends, and annual produce, (or) the said messuages, lands, and hereditaments, or the rents and profits thereof,] or any part thereof, would or might, if hereby [vested in him, or] made payable to, or receivable by himself, be forfeited to, or become vested in, any other person or persons, or become subject to the debts of him, the said A. B., in anywise soever, and from and after the decease of the said A. B., or any such other earlier determination of the trust hereinbefore declared, for the benefit of the said A. B., as aforesaid. Upon trust, &c.

*Trusts for renewal of Leaseholds, and the Payment of Rent, and performance of Covenants.*

Upon trust, that they, the said [trustees,] or other the trustees or trustee, for the time being, of these presents, shall and do, from time to time, during the continuance of the trusts hereby created, by, with, and out of the improved yearly rents and profits of the said leasehold premises, hereby assigned, or intended so to be, pay and satisfy the yearly rent and rents, [or a proportionate share of the yearly rent or rents,] which shall, for the time being, become

\* The passages within brackets would be proper if the parties had not the entirety of the premises.

payable in respect of the same leasehold premises ; and do and shall perform and keep all and singular the covenants and agreements contained in the original lease or leases to be obtained of the said leasehold premises, or any part thereof, and on the lessee's part to be performed and kept, and pay all charges and expenses attending the same ; and also do and shall, in the next place, from time to time, during the continuance of the trusts hereby declared, when and as the same shall be necessary, or the trustee or trustees, for the time being, of these presents, shall deem it expedient or proper, but not otherwise, apply for and procure [or join and concur with the owners or proprietors for the time being, of any other part or share, parts or shares, of the said leasehold premises, in applying for and procuring] a new lease or new leases of the said leasehold premises, or such of them, or such part or parts thereof as are or shall be of a renewable nature, or which the said trustees or trustee for the time being shall, in their or his discretion, think advisable or proper to renew ; and also shall and do make and execute [or join and concur with such owners or proprietors as aforesaid in making and executing] all such surrenders, acts, matters, and things, as shall be necessary or expedient for procuring such renewed lease or leases ; and do and shall, out of the improved yearly rents and profits of the said leasehold premises, or by mortgage thereof, levy and raise all such sums of money as shall, from time to time, be found necessary or proper for the payment and satisfaction of the fines, fees, and other charges for or attending the procuring such new lease or leases ; and in case any money shall, at any time or times, be raised by mortgage, for the purpose of obtaining such new lease or leases as aforesaid, then shall and do thenceforth, until the principal money so to be raised by mortgage shall be paid off, or until some person or persons shall become entitled to the absolute property and interest of and in the said leasehold premises, under the trusts

hereof hereinafter declared, apply all the improved yearly rents and profits of the said leasehold premises, when and as often as the same shall amount to a competent sum, or the mortgagee or mortgagees can be prevailed upon to accept the same, in, for, or towards payment and satisfaction of the money which shall be raised by mortgage as aforesaid, and the interest thereof; and subject and without prejudice to the trusts aforesaid, shall and do stand possessed of, and interested in, all and singular the said leasehold premises, and such renewed leases as aforesaid; upon and for the trusts, intents, and purposes, and under and subject to the powers, provisoes, declarations, and agreements hereinafter expressed, declared, and contained of and concerning the same.

#### OBSERVATIONS ON MARRIAGE-SETTLEMENTS.

Though the subject of marriage-settlements was altogether passed over in the first edition of this work, either from having escaped the attention of the author, or from having been thought by him too extensive to be admitted into it, the editor cannot but feel that the work would be imperfect if the subject were entirely omitted; and under this impression, therefore, he has introduced a simple form applicable to the ordinary cases, where money in the funds, or other personal estate, or the produce to arise from the sale of real estates, are the subject of the settlement, and also two forms relating to the settlement of small real or leasehold estates, one subjecting them to the same trusts as a contemporaneous settlement of personalty by means of trusts for sale, and the other where, though the property is not of sufficient value to justify its being tied up by the limitations of a strict settlement, it is nevertheless wished to preserve it in the family of the proprietor.

Where the property to be settled consists of landed property of small value, which the parties have no desire to retain, in case it should become con-

venient to convert it into money, it is generally considered advisable to convey it by a separate deed to the trustees of the settlement, upon trust for the proprietor till marriage, and afterwards upon trusts for sale with his consent, or at the request of any other parties to whom it may be wished to give the power of delaying the sale, and to stand possessed of the money to arise by such sale, upon the trusts declared by the settlement.

Such a conveyance should not disclose what those trusts are, but should contain such full powers for the trustees to receive and give discharges for the purchase-money, as would quite exonerate the purchaser from inquiring into them. The conveyance should also contain a power of appointing new trustees, a power to lease, and (in the case of renewable leaseholds or copyholds) a trust for renewal and payment of rents.

The advantage of this course on a sale of the property must be obvious, for the deed can be given up to the purchaser, and the property conveyed to him, without the concurrence of the parties interested under the trusts of the settlement; and no covenant for its production will be required, which would be the case if the property were conveyed to the trustees by the settlement itself.

If the property to be settled is at the time subject to any entail, the propriety of barring such entail by a distinct conveyance from the settlement is still more obvious, for the expense of enrolling a long deed of settlement must be very considerable. It may, indeed, be laid down as a general rule, that the real and personal estates should be settled by distinct assurances; and though, by so doing, some small extra expense may be occasioned at the time, it will ultimately be found to be the best course, even on economical grounds alone.

Where the gentleman is actually or likely to become engaged in any profession or business which may subject him to the operation of the bankrupt

Provisions  
against bank  
ruptcy.

laws, it is sometimes desirable to frame the trusts and limitations of the settlement with a view to preserve some provision for his wife and family, in the event of his becoming bankrupt. This may be partially effected by giving the first life estate in all the property to the wife for her separate use,<sup>2</sup> which will preserve the property for the benefit of the family during her life. As an objection is, however, (and as it appears to the editor justly,) felt against that course, the income of the property is sometimes limited to the husband, till his bankruptcy, insolvency, or voluntary alienation of it, and then to his wife, for her separate use, for the remainder of her life; but as such a limitation would be invalid as to any property that was originally his own,<sup>3</sup> the most effectual mode of gaining the proposed end appears to be, to give the first life interest in the gentleman's property to the wife, for her separate use, and limit her property to the husband till his bankruptcy, insolvency, or voluntary alienation. Such a limitation of the wife's property would be supported.<sup>4</sup>

On referring to the cases cited in support of these positions, it will be observed, that such limitations as are here recommended are construed with great strictness. Thus, if the limitation over is made to depend upon any attempt to alien, incur, or charge by the party himself, an alienation by act of

<sup>2</sup> If not given to her separate use, the gentleman would be entitled to dispose of it for the term of their joint lives; and to that extent it would consequently vest in his assignees, in the case of bankruptcy or insolvency; but whether the husband's power extends beyond his own life, so as to affect his wife's interest as survivor, appears to be yet unsettled. *Stiffe v. Everitt*, 1 M. and Cr. 37.

<sup>3</sup> *Higinbotham v. Holme*, 19 Ves. 88.

<sup>4</sup> *Brandon v. Robinson*, 18 Ves. 429; *Ex parte Hodgson*, 19 Ves. 206; and see *Id.* 92, *Wilkinson v. Wilkinson*, 3 Swanst. 515; *Lear v. Legget*, 2 Sim. 479; 1 Russ. and M. 690.

law, as on bankruptcy, is not considered within the terms of the provision,<sup>a</sup> and a restraint upon alienation upon a gift to a man for life, without any gift over on such event, is entirely inoperative.<sup>b</sup>

Where it is wished to give a woman any interest, for her separate use,<sup>c</sup> it must be remembered that the ordinary limitation for that purpose not only deprives her husband of all power over it, but puts her in the situation of a *feme sole*<sup>d</sup> as to such property, and consequently enables her to make any disposition of it she pleases.<sup>e</sup> If, therefore, it is desired to provide against the exercise of that moral influence which a husband generally has over his wife, and under which she may be induced to part with her separate property, her power over it should be taken away by an express provision, ordinarily termed a restraint upon anticipation, which, united with the limitation to her separate use, will effectually secure to her the enjoyment of that provision which was intended for her.<sup>f</sup>

Restraint on alienation.

Great care should be taken, in framing a settlement, to express clearly the events upon which the interests of the children are to become vested. The ordinary and best course is to declare, that all the sons of the marriage who attain twenty-one, and all the daughters who attain that age, or previously marry, (with consent of parents, if so wished,) shall take vested interests, and *that* without reference to their surviving their parents.

Period of vesting.

If the period of vesting is postponed to the age of twenty-five, or any other period later than twenty-one, such a limitation, in any antenuptial settlement

<sup>a</sup> See also *Whitfield v. Prickett*, 2 Keen, 608.

<sup>b</sup> *Woodmeston v. Walker*, 2 Russ. and M. 204.

<sup>c</sup> For a form of a trust of this sort, see *ante*, p. 55.

<sup>d</sup> *Sturges v. Corp*, 18 Ves. 190.

<sup>e</sup> *Brandon v. Robinson*, 18 Ves. 434.

<sup>f</sup> *Woodmeston v. Walker*, 2 Russ. and M. 205; see *Tullett v. Armstrong*, 1 Beav. 1, and L. J. N. S. 41 Ch., in which the points as to separate estate are fully considered.

as to all the children, and in a postnuptial settlement as to those not born at its execution, would be void;<sup>f</sup> for the vesting of any real or personal estate under such circumstances cannot be postponed to a period or event which may possibly not happen till after twenty-one years from the death of the parents—the greatest time allowed by law for postponing the vesting of any estate being a life or lives in being, and twenty-one years, and a period for gestation afterwards.

A marriage-settlement should always be executed before the marriage actually takes place; for if it were executed afterwards, it would be considered as voluntary, unless made in pursuance of a written antenuptial agreement, in which case, so far as its provisions are in conformity with the terms of the agreement, it would have the same validity as if made before marriage.

Where government or other stock, or shares in any company, are the subject of a settlement, care should be taken to vest it in the trustees, in the mode required for the transfer of such particular kind of property. Thus, an actual transfer in the books of the Bank of England as to any government stock, or in the books of any company, as to any shares in, or property under, the control of such company, should always be obtained previous to the marriage; and where money is settled, the trustees should require either that it be paid to them, or invested in their names, and should obtain possession of the securities; but if reversionary or other property, which does not, at the time, admit of being legally vested in the trustees, be settled, all the precautions of which the case may admit should be taken for preventing the party to whom the property belonged from continuing to deal with it afterwards as his own. Thus, if trust-property, or a

<sup>f</sup> Lord Southampton v. M. of Hertford, 2 Ves. and B. 54; Leake v. Robinson, 2 Mer. 362; and see p. 388.

policy of insurance, or a debt, be settled, notice of the settlement should be given to the trustees, or other party by whom payment is eventually to be made ; and where the whole legal estate is vested in the trustees of the settlement, they are entitled to, and should obtain, the possession of the title-deeds.



## \*CHAPTER XXXVI.

### STAMPS.

THOUGH no part of the original work was devoted to the consideration of the Stamp-laws, the editor of the present edition has thought that a chapter on such portions of the Stamp-acts as are applicable to the ordinary proceedings in conveyancing, is quite consistent with the general design of the work, and will prove not altogether unacceptable to the practical reader.

The general stamp-act now in force was passed in the 55th year of George the Third, and came into operation on the 1st September 1815. It has been amended, so far as it applied to the transfer of mortgages, and some other points not within the scope of this chapter, by the 3d George the Fourth, c. 117, which came into operation on the 15th August 1822. The act of 1st and 2d Geo. IV., ch. 55, was passed to remove doubts which had arisen as to the stamps chargeable on instruments affecting property, of which part might be situate in Ireland, and other part in Great Britain, or elsewhere; and as to bonds executed by several persons, some residing in Ireland, and others in Great Britain, or elsewhere, by declaring that, in such cases, the proper stamps were those chargeable in Great Britain.<sup>a</sup>

<sup>a</sup> The other acts relating to stamps are the 5th Geo. IV., c. 41, for repealing certain duties on legal proceedings; the

The selections from the provisions of the stamp-acts, which will be found in this chapter, have been made principally with a view to the different conveyances and other instruments, of which the forms are given in this work. Of those particulars, which find their way into every pocket-book and almanack, no notice has been taken.

*Agreement*, or any minute or memorandum of an Agreement. agreement under hand only, (not otherwise charged,) where the matter thereof shall be of the value of L.20, or upwards, whether the same shall be only evidence of a contract, or obligatory on the parties, from its being a written instrument, *together with every schedule, receipt, or other matter put or indorsed thereon, or annexed thereto.*<sup>1</sup>

Where the same shall not contain more than

15 folios, L.1 0 0

If it contains more than 15 folios, 1 15 0

3d and 4th William IV., c. 23, for reducing the stamp-duties on advertisements, and on certain sea-insurances; to repeal the stamp-duties on pamphlets, and on receipts for sums under L.5; and to exempt insurances on farming stock from stamp-duties; an act passed in the same session, being ch. 97, for regulating the sale of stamps; the 35th chapter of the 1st and 2d Victoria, for exempting from stamp-duty the admission of freemen by birth on servitude, in places in England returning members to Parliament; and the 85th chapter of the same session, declaring that a stamp of the proper amount shall be sufficient, though not of the same sort as generally used for the instrument of the particular character in question.

<sup>1</sup> These matters are to be reckoned, in all cases where the stamps depend on the length of an instrument—signatures, receipts, (*Linley v. Clarkson*, 3 Tyr. 353, 1 C. and M. 436)—words on a map or plan, (*Wreken v. Evans*, 4 C. and P. 359)—and figures, which are to be counted as words, (*Lord Dudley v. Robins*, 3 C. and P. 62) are reckoned; but the ordinary indorsement of the date, parties, &c., need not be brought into the calculation; *Windler v. Fearon*, 7 D. and R. 185, 4 B. and C. 663.

<sup>2</sup> Common law folios of 72 words each, being 1080 words.

With a *progressive duty*\* of L.1 5 0

Agreements, for granting a lease at a rack-rent of less than L.5, for the hire of any labourer, artificer, manufacturer, or menial servant,<sup>1</sup> and agreements for or relating to the sale of any goods, wares, or merchandise, are exempted from the before-mentioned duties by the act itself; and written agreements to take a debt out of the statute of limitations are exempted by the 8th sect. of Lord Tenterden's act, 9th Geo. IV., c. 14.

Annuity.

Annuity, see Bond and Conveyance.

Appointment.

Appointment of real or personal property in execution of a power, and whether by deed or simple writing, . . . L.1 15 0

Progressive duty, . . . 1 5 0

If the appointment is made by way of mortgage or sale, it would be liable to the same stamps as other conveyances for such purposes.

Appointment of a gamekeeper, . . . L.1 15 0

Apprenticeship.

Apprenticeship indenture, or other writing containing the covenants or agreements for or relating to the service of any apprentice, clerk, or servant, who shall be put or placed to or with any master or mistress, to learn any profession, trade, or employment, except articles of clerkship to attorneys, &c.; if the sum of money, or the value of any other matter or thing which shall be, or be secured to be paid, given, assigned, or conveyed to or for the use or benefit of the master or mistress, with or in respect of such apprentice, or both the money and the value of such other matter or thing shall not amount to L.30, L.1 0 0

\* The *progressive duty* is payable for every *completed* 15 folios after the first 15. Thus, a deed of 30 folios is subject to it, though one of 29 is exempt; a deed of 45 folios is liable to a double progressive duty; one of 60 to treble; and so on. It will be noticed, that, where an *ad valorem* duty is payable, the progressive duty is only L.1, and in other cases L.1, 5s.

<sup>1</sup> Apprentices are not included in these words; *Rex v. St Paul's, Bedford*, 6 T. R. 452.

If the same shall amount

to L.30, and not amount to	L.50,	L.2	0	0
50,	100,	3	0	0
100,	200,	6	0	0
200,	300,	12	0	0
300,	400,	20	0	0
400,	500,	25	0	0
500,	600,	30	0	0
600,	800,	40	0	0
800,	1000,	50	0	0
1000, and upwards,		60	0	0

Duplicate in any of the above cases, L.1 15 0

And where there is no consideration, and the indenture does not contain more

than 15 folios, . . . 1 0 0

And duplicate, (if any,) . . . 1 0 0

But if it contains more than 15 folios, 1 15 0

And duplicate, (if any,) . . . 1 15 0

Transfers or assignments, and their duplicates, are subject to the same stamps as indentures without consideration; but if any valuable consideration, as before mentioned, "exclusive of any part of the consideration to the former master or mistress, which may be returned, or given, or transferred to the new master or mistress," the same stamps upon its value are chargeable as on original indentures.

Duplicate of the indenture or assignment, L.1, 15s., or the same as on the original, if less than that sum.

Indentures for placing out poor children at the sole charge of any parish or public charity, and assignments thereof, are exempted from all stamp-duty.

Award, L.1, 15s., with a progressive duty of Award.

L.1, 5s.

Bargain and sale (or lease) for a year, for vesting possession on a sale or mortgage. Bargain and sale.

Where the considerations expressed in the release shall not amount to L.20, . . . L.0 10 0

Where the same shall amount to L.20,	
and not to L.50,	L.0 15 0
L.50, and not to L.150,	1 0 0
L.150, and upwards,	1 15 0
Upon any other occasion,	1 15 0

It will be noticed, that no progressive duty is charged on a bargain and sale for a year ; and, therefore, though it should extend over several skins of parchment, the first only need be stamped.

Bargain and sale, being a conveyance or mortgage, —see those heads.

Bargain and sale (to be enrolled) of any estate of freehold in lands or other hereditaments in England, upon any other occasion than the mortgage or sale thereof,—L.5, with a progressive duty of L.1, 5s.

Bond.

Bond given as a security for the payment of any annuity, (except upon the original creation and sale thereof,) or for any sum or sums of money at stated periods, (not being interest or rent,) for any definite term, so that the total amount of the money to be paid can be previously ascertained,—the same duty as on a bond for payment of a sum of money equal to such total amount.\*

Bonds for securing any annuity or other right not before in existence upon the sale thereof, when the same shall not be created by actual grant or conveyance, are liable to the same duty as an actual grant or conveyance according to the amount of the consideration thereof, but if the same shall be secured also by warrant of attorney, covenant, contract, or otherwise, the *ad valorem* duty will be only chargeable on one of such instruments.

Bond given as a security for the payment of any annuity, except upon the original sale and creation thereof, or of any sums at stated periods, (not being interest or rent,) for a life or any indefinite period.

\* These are not given, being the same as stamps on mortgages.

Where the annuity or sum secured shall not amount to L.10 per annum,		L.1	0	0
L.10, and not to 50,		2	0	0
50,	100,	3	0	0
100,	200,	4	0	0
200,	300,	5	0	0
300,	400,	6	0	0
400,	500,	7	0	0
500,	750,	9	0	0
750,	1000,	12	0	0
1000,	1500,	15	0	0
1500,	2000,	20	0	0
2000, and upwards,		25*	0	0

Bond for the due execution of an office, and to account for money received by virtue thereof, L.1, 15s., with a progressive duty of L.1, 5s.

Charter-party, or any agreement or contract for the charter of any ship or vessel, or any memorandum, letter, or other writing between the captain, master, or owner of any ship or vessel, and any other person for or relating to the freight or conveyance of any money, goods, or effects on board of such ship or vessel, L.1, 15s., with a progressive duty of L.1, 5s.

Conveyance, whether grant, disposition, lease, assignment, transfer, release, renunciation, or of any other kind or description upon the sale of any lands, tenements, rents, annuities, or other property, real or personal, or of any right, title, interest, or claim therein, for the principal, or only deed, instrument, or writing, where the purchase or consideration-money therein or thereupon expressed shall not amount to L.20, L.0 10 0

Where the same shall amount to

L.20, and not to L.50,	1	0	0
50, 150,	1	10	0

\* If the payments should not be reserved yearly, the annual amount must be ascertained by taking an average; thus a triennial payment of L.75 would be considered as an annual payment of L.25.

L.150,	L.300,	L.2	0	0
300,	500,	3	0	0
500,	750,	6	0	0
750,	1,000,	9	0	0
1,000,	2,000,	12	0	0
2,000,	3,000,	25	0	0
3,000,	4,000,	35	0	0
4,000,	5,000,	45	0	0
5,000,	6,000,	55	0	0
6,000,	7,000,	65	0	0
7,000,	8,000,	75	0	0
8,000,	9,000,	85	0	0
9,000,	10,000,	95	0	0
10,000,	12,500,	110	0	0
12,500,	15,000,	130	0	0
15,000,	20,000,	170	0	0
20,000,	30,000,	240	0	0
30,000,	40,000,	350	0	0
40,000,	50,000,	450	0	0
50,000,	60,000,	550	0	0
60,000,	80,000,	650	0	0
80,000,	100,000,	800	0	0
100,000, or upwards,		1000	0	0

with a progressive duty of L.1.

And where any freehold lands or hereditaments in England shall be conveyed by feoffment or bargain and sale enrolled, and not by both, such feoffment or bargain and sale, unless accompanied by a lease and release, shall be charged with a further duty of the same amount as would have been charged on the lease for a year if the premises had been conveyed by lease and release.

Conveyance  
by different  
deeds.

Where property of different tenures or holdings, or held under different titles contracted for at one entire price, shall be conveyed in separate parts by different instruments, the consideration-money may be apportioned as the parties think fit, so that a distinct consideration is set forth for each, and distinct *ad valorem* duty be paid on the conveyance of each portion.

Where any property contracted for at one entire

price by two or more persons jointly, or by any person in trust for himself and others, or wholly for others, shall be conveyed in parts by separate deeds to the persons for whom the same shall be purchased for distinct parts of the purchase-money, the conveyance of each part shall be charged accordingly; but if the different parcels are conveyed to the different persons by the same deed, such deed shall be charged with an *ad valorem* duty on the aggregate amount of purchase-money.

Purchases by several jointly.

In the case of a conveyance from the original vendor to a sub-purchaser, the conveyance must be stamped according to the amount of the consideration paid by such sub-purchaser without regard to the amount of the original purchase-money, unless a previous conveyance duly stamped had been made from the first to the sub-purchaser, when any confirmatory conveyance from the original vendor would be subject only to the ordinary deed stamp.

Sub-purchasers.

When lands separately contracted to be purchased from different persons at distinct prices shall be conveyed by one deed, the *ad valorem* duty shall be chargeable on the aggregate amount of the purchase-moneys.

Property comprised in several contracts.

Where the whole or any part of the consideration is formed of money charged on the property, whether due to the purchaser himself, or afterwards to be paid by him, the same is to be deemed part of the purchase-money.

Where there is a charge on the property.

Where hereditaments are conveyed by bargain and sale enrolled, and also by lease and release, or feoffment, the release or feoffment shall be deemed the principal deed; but if the conveyance is effected by lease and release, and feoffment, the release shall be so considered. In conveyance of copyholds, the surrender or grant, or the memorandum thereof, if made out of court, but if in court, then the copy of court-roll shall be deemed the principal deed.

Principal deed.

In other cases the parties may determine for themselves which shall be the principal deed.



Duplicates of instruments chargeable with *ad valorem* duty exceeding L.2 are chargeable with the common deed stamp only.

Where deed  
comprises se-  
veral objects.

"And where any deed or instrument operating as a conveyance on the sale of any property shall operate also as a conveyance of any other than the property sold by way of settlement, or for any other purpose, or shall also contain any other matter or thing besides what shall be incident to the sale and conveyance of the property sold, or relate to the title thereto, every such deed or instrument shall be charged in addition to the duty to which it shall be liable as a conveyance on the sale of property, and to any progressive duty to which it may also be liable, with such further stamp-duty as any separate deed containing the other matter would have been chargeable with, exclusive of the progressive duty."

Conveyance of equity of redemption to a purchaser in the same deed with a mortgage. See Mortgage.

Declaration  
of trust.

Declaration of any use or trust, whether by deed or not, - - - L.1 15 0

Progressive duty, - - - 1 5 0

Deed.

Deed not otherwise charged nor exempted from all stamp-duty, - 1 15 0

With a progressive duty of - 1 5 0

Exchange.

Exchange or partition, if nothing, or a sum less than L.300, is paid for equality of exchange or partition, 1 15 0

Progressive duty, - - - 1 5 0

But if L.300 or upwards be paid for equality of exchange or partition, the same *ad valorem* and progressive duties as on a conveyance are chargeable.

Feoffment.

Feoffment, if not liable to the *ad valorem* duties on a sale or mortgage, - L.1 15 0

And where the same shall also contain a letter of attorney to deliver or receive seisen, a further duty of - 1 15 0

A progressive duty, - - - 1 5 0

Lease.

Lease granted in consideration of any fine or premium, without any yearly rent, or a rent under

L.20 per annum, (except leases for not more than three lives, or a term of years determinable with a life or lives not exceeding three, and by whomsoever granted, and except leases for a term absolute, not exceeding twenty-one years, granted by ecclesiastical corporations,) are subject to the same duty as conveyances on the sale of lands for a sum of money of the same amount as such fine or premium.

Lease without fine or premium, where the yearly rent shall not amount to L.20, L.1 0 0

Where it shall amount to

L.20, and not to L.100,	1	10	0
100, 200,	2	0	0
200, 400,	3	0	0
400, 600,	4	0	0
600, 800,	5	0	0
800, 1000,	6	0	0
1000, or upwards,	10	0	0

Leases granted at a yearly rent and for a fine are subject to *ad valorem* duty, both in respect of the rent and fine.

Leases not otherwise charged, - L.1 15 0

Counterpart of any lease, with a duty not exceeding L.1,—the same duty

as on the lease itself, in other cases, 1 10 0

Progressive duty on all leases, - 1 0 0

Letter or power of attorney by any petty officer, Letter of at-  
seaman, or marine, or their executors or ad- torney.  
ministrators, for receiving prize money,

L.0 1 0

For receiving wages, 1 0 0

Other letters of attorney not relating to government stock, -

1 10 0

Progressive duty, - - 1 5 0

Letters of licence from creditors to a debtor, - - -

1 15 0

Letter of li-  
cence.

Progressive duty, - - - 1 5 0

Memorial of the grant of an annuity, 1 0 0 Memorial.

And for every piece of vellum, parch-  
ment, or paper, upon which such

memorial shall be written beyond

the first, - - - L.1 0 0

Mortgages.

The following duties are imposed upon every mortgage, conditional surrender, conveyance in trust for sale, further charge or other security of or affecting any lands, estate, or property, real or personal, heritable or moveable, and also on any agreement or bond, accompanied with a deposit of title-deeds for making a mortgage, or security of any lands, estate, or property, comprised in such title-deeds, or for pledging or charging the same as a security.

Where the same respectively shall be made as a security for the payment of any definite and certain sum of money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable, not exceeding

L.50,		L.1 0 0
50,	L.100,	1 10 0
100,	200,	2 0 0
200,	300,	3 0 0
300,	500,	4 0 0
500,	1,000,	5 0 0
1,000,	2,000,	6 0 0
2,000,	3,000,	7 0 0
3,000,	4,000,	8 0 0
4,000,	5,000,	9 0 0
5,000,	10,000,	12 0 0
10,000,	15,000,	15 0 0
15,000,	20,000,	20 0 0
exceeding L.20,000,		25 0 0

And where the same shall be made as a security for the repayment of money to be thereafter lent or paid, or which may become due on an account-current, either with or without any sum already advanced or due, except any sums to be advanced for the insurance of any property comprised in such mortgage against fire, or for the insurance of any lives, pursuant to any agreement in any deed whereby any annuity shall be granted for such lives.

If the sum secured, or to be ultimately recoverable, shall be uncertain and without any limit, L.25.

But if the total amount thereof be limited not to exceed a given sum, the same duty as on a mortgage for such limited sum.

The stamp on securities for the transfer or re-transfer of stock or funds, whether government or the East India or South Sea Companies, is to be determined by the value according to its average price at the date of the mortgage, or on either of the ten days preceding.

Where both stock and money are secured, a stamp is chargeable in respect of each.

Where distinct sums of money or stock are secured to different persons, the *ad valorem* duty is chargeable on each sum, and not on the aggregate amount.\*

The progressive duty on mortgages, as in other cases where an *ad valorem* duty is paid, is L.1.

Where copyholds are mortgaged jointly with other property, the *ad valorem* duty is chargeable on the deed or instrument relating to such other property, even though the copyholds are in fact conveyed or charged by a distinct instrument from the other property;† but if they are mortgaged alone, and a conditional surrender or grant forms the only or one of the securities, the stamp is imposed on the surrender or grant, if made out of the court, or the copy of court roll, if made in court.

The following exemptions from the preceding *ad valorem* duties are given by the act :

Any deed or other instrument made for the further assurance of property already charged by a deed or instrument which shall have paid the *ad valorem* duty on mortgages. Further assurance.

Any deed or other instrument made as an addi-

\* Reed v. Willmott, 5 M. and P. 553; 7 Bing. 577; and see suggestion on this head, *ante*, 459.

† Reed v. Willmott, 5 M. and P. 553; 7 Bing. 577.

Additional security.

tional or further security for any sum or stock already secured by a deed or instrument which shall have paid the *ad valorem* duty, in case such further security be made by the same persons who made the original security.

By the 3d George IV., c. 117, sec. 3, any deed or other instrument, being an additional security for money or stock previously secured by a *bond* upon which the *ad valorem* duty has been paid, are chargeable only with the ordinary duty payable on deeds.

A further security by any other party than the original mortgagor, not being within these exceptions, would be liable to the *ad valorem* duty on original mortgages, unless the primary security was simply a bond, in which case the exemption applies whether the person executing the further security was the same person who gave the bond or not.

Unless the language of the exemptions is read with attention, a confusion may arise between instruments for the *further assurance* of an estate, or property, already charged, and instruments for the *further security* of sums already secured; the exemption, in the former case, is not, as in the latter, confined to instruments executed by the original mortgagor. Thus, if the heir was to confirm a mortgage by his ancestor, the deed of confirmation would require no *ad valorem* stamp; but if the ancestor had mortgaged Black Acre to secure a given sum, and the heir should afterwards convey White Acre to the mortgagee, as a further security, the *ad valorem* duty would be payable, and so (as the editor conceives) if the father had mortgaged his estate for life in Black Acre, and the son afterwards conveyed his reversion in fee as a further security, an *ad valorem* stamp would be payable; for, though its subject is, popularly speaking, the same property, it is not the same estate in the legal sense of the word.

If two or more persons, who had mortgaged different premises, or their different shares or estates in the same property, concur in an assignment of

the respective mortgages to the same person, for the purpose of making all the several properties or shares liable to the aggregate amount of the several mortgages, which is sometimes the case where a tenant for life, and the person entitled in remainder, have separately mortgaged their different interests, it would appear that a fresh *ad valorem* duty is payable; for, so far as the deed operates as a further security for the original mortgage debts, it is not made by the same person who made the original security, which it must be, in order to bring it within the exemption in the 55th George III.

Mistakes are often fallen into in determining the proper stamps payable on mortgage deeds, from the erroneous notion, that the amount actually lent or forborne, at the time of the execution of the securities, is the criterion by which the estimate should be made; whereas the duty is also payable upon any money which may afterwards be lent, advanced, or paid, or which may become due on an account-current, of which the repayment is secured by the mortgage. Future advances.

A mortgagee would be entitled to a lien on the premises for his costs, without any agreement for that purpose, and no higher stamp is payable in consequence of the insertion of such a stipulation.

If the mortgage contains a power to lay out money in completing an unfinished house, or making extensive improvements on the premises, or (as is often the case in mortgages of life interests) for insuring the mortgagor's life, and also an agreement that the premises should not be redeemable till those sums and interest on them be paid, a further *ad valorem* duty would be required, which (unless the sum ultimately to be recovered under the mortgage should be limited) must be the highest stamp. Such, as above stated, is the general rule, but there are several exceptions to it; thus the legislature have exempted from stamp-duty premiums payable upon

<sup>1</sup> Coventry on the Stamp Act, 807.

the insurance of the mortgaged premises against fire, and upon any lives for which annuities may be granted; and it has been held, that such disbursements as rent, taxes, repairs, heriots, and customary outgoings, if paid by the mortgagee, may be recovered with interest after the rate reserved on the original loan, though the *ad valorem* stamp on the mortgage was not of an amount sufficient to have covered them.\*

Expense of re-  
newing lease-  
holds.

If the mortgage provides for the recovery of the expenses of renewing leaseholds in mortgage, or of insuring any of the lives for which they are held, by empowering the mortgagee to expend money for that purpose, and giving him a lien for such amount, an additional stamp would be required; but a covenant by the mortgagor to lay out money for that purpose would not affect the stamp.

The amount intended to be secured must be limited by the deed, and though, as in the case of the premiums on a life assurance, which were made recoverable in a mortgage-deed, the amount might have been estimated; yet, if no stated limit appears on the deed, the highest duty is payable.<sup>†</sup> Wherever, therefore, the deed contains any provision for the expenditure of any money by the mortgagee, either in the first instance, or in the event of the mortgagor's neglect, for the insurance of any lives, the renewal of leases, or any other purpose not amongst the excepted cases before mentioned, and for charging such money on the mortgaged property, a provision should always be inserted limiting the principal, which may be eventually recoverable upon the securities to a certain amount, which should be the highest amount which the stamp necessarily imposed on the deed will cover. It is laid down in many cases that no duty is charge-

\* *Doe v. Snaith*, 8 Bing. 146; *Hardy v. Reeves*, 4 Ves. 460.

† *Doe v. Larder*, 3 B. N. C. 92.

† *Halse v. Peters*, 2 B. and Ald. 807.

able in respect of interest on the amount of the principal secured."

The general stamp-act imposed the same *ad va-* Transfers.  
*lorem* duties on a transfer of a mortgage as were imposed on the original mortgage itself, except in cases where the person entitled to the right of redemption or reversion was not made a party, or where the original mortgagor (continuing entitled to the right of redemption or reversion) was made a party, but no further sum or stock was added to the principal already secured. The 3d George IV., c. 117, repealed the provision of the 55th George III., so far as they related to the duties on transfer of mortgages, and substituted in lieu thereof other provisions under which many instruments are now chargeable with the simple deed-stamp which were previously subject to the original *ad valorem* duty.

Under the 2d section of that act, any transfer of a mortgage, or other security, comprised within the provisions of the 55th George III., or of the benefit thereof, or of the money secured thereby, is liable only to the deed-stamp of L.1, 15s., with a progressive duty of L.1, 5s., "provided no further sum of money or stock be added to the principal money or stock already secured." And where any further sum of money or stock is so added, the *ad valorem* duty is chargeable only in respect of such further sum of money or stock.

Where the transaction amounts substantially to a transfer of a mortgage, a new *ad valorem* duty will not become payable in consequence of a new proviso for redemption, and a fresh covenant for payment being taken instead of an assignment of the old debt, which is only necessary where the mort-

\* *Dixon v. Robinson*, Moody and Rob. 115; *Prussing v. Ing*, 4 B. and A. 204; *Israel v. Benjamin*, 3 Camp. 40.

† *Jarm. Bythe*, vol. vi. 269. But see *Martin's case*, 5 Bing. 160.



gagor does not concur in the transfer, though thereby a fresh debt is contracted ; nor is it necessary, in order to avoid the repayment of the *ad valorem* duty, that the securities should be assigned to or vested in the transferee of the mortgage in the manner in which they were granted to the original mortgagee. Thus the conversion of a mortgage by demise into a mortgage in fee, on the occasion of an assignment of the security, was considered, with reference to the stamp, in the light of a transfer only.\*

If it is agreed that arrears of interest paid by the assignee to the original mortgagee, or other person making the assignment, should be converted into principal, and itself bear interest, an *ad valorem* duty for the amount so converted into principal will be payable, as if a further sum had been lent to the mortgagor.\*

If, however, the person taking the transfer should pay to the mortgagee any amount, however large, of interest or costs due to him on his security, no additional duty would be payable, unless the mortgagor concurred for the purpose of converting such amount into principal, for no agreement between the mortgagee and assignee could, without such concurrence, have the effect of converting interest into principal, or making costs carry interest. When upon an assignment of a mortgage an *ad valorem* duty is payable on account of a further advance, or a conversion of interest into principal, it is not necessary that there should be an additional deed-stamp upon the transfer, and the progressive duty will be only L.1 instead of L.1, 5s., which would have been the proper stamp, had no further sum been

\* *Doe v. Gray*, 3 Ad. and El. 89 ; *Paddon v. Bartlett*, 4 Nev. and Man. 1 ; 2 Ad. and El. 9.

\* *Coventry on the Stamp Act*, 445 ; *Coote on Mortgages*, 440.

lent, and the common deed-stamp on the transfer been alone paid.†

Mortgages with a conveyance of the equity of redemption or reversion in the same deed, to or in trust for, or according to the direction of a purchaser, are chargeable with the *ad valorem* duty on mortgages and conveyances, but if limited in any other manner, with the mortgage duty only.

In any other cases, any deed or writing, in which a mortgage shall be contained with any other matter, except what shall be incident to such mortgage, shall be charged with the same duties (except the progressive duty) as such mortgage or other matter would have been separately charged with if contained in separate deeds or writings.

Notarial act not otherwise charged, L.0 5 0 Notarial act.

And for every piece of paper, parchment, or vellum, upon which the same shall be written after the first, a progressive duty of

0 5 0

Partition. See Exchange.

Partition.

Protest of any bill of exchange or promissory-note for any sum not amounting to

L.20, L.0 2 0

Amounting to L.20; and not to 100, 0 3 0

100, 500, 0 5 0

500, and upwards, 0 10 0

Protest of any other kind, see Notarial Act.

Release and renunciation of real or personal property, or of any right or interest therein not otherwise charged or exempted,—the same as common deeds. Release.

Revocation of any use or trust of real or personal property, whether by deed or not, the same as common deeds.

Surrender of any term, or of any freehold or uncertain interest in lands or hereditaments not being Surrender.

† Doe v. Gray, 3 Ad. and El. 89; Doe v. Roe, 4 B. N. C. 737; Doe v. Edwards, 3 Ad. and El. 99.

copyhold, not otherwise charged or exempted. See Deed.

Warrants of attorney.

Warrants of attorney to confess judgment<sup>a</sup> as a security for money or stock, are liable to the same stamps as bonds for similar purposes, except where another security upon which the *ad valorem* duty so paid is also given, and except where it shall be given for securing any sum for which the person giving the same shall be in custody under an arrest, in which cases the duty is L.1.

Exemptions.

The following are the terms of the general exemptions from all stamp-duties :

All bonds, contracts, mortgages, conveyances, deeds, and instruments whatever, exempted from stamp-duty by the act of the 17th George III., c. 53, or any other act or acts of Parliament now in force for promoting the residence of the parochial clergy, by making provisions for building, repairing, or purchasing houses and other buildings for the use of their benefices.

All affidavits, contracts, mortgages, conveyances, deeds, and instruments whatever, exempted from stamp-duty by the act of the 42d George III., c. 116, or any other act or acts of Parliament now in force relating to the redemption and sale of the land-tax.

All transfers of shares in the government or parliamentary stocks or funds.

All grants, leases, and other conveyances and instruments exempted from stamp-duty by any act or acts of Parliament now in force relating to the land revenues of the crown.

All bonds, contracts, and assignments relating to the transportation of convicts.

<sup>a</sup> A cognovit requires no stamp except an agreement stamp, where it contains any agreement ; *Reardon v. Swatz*, 4 East, 188.

## \*CHAPTER XXXVII.

### STATUTORY DECLARATIONS.

By the 18th section of an act passed in the 5th and 6th years of the reign of his late Majesty, c. 62, for the suppression of voluntary and extrajudicial oaths and affidavits, which repealed a previous act passed in the same session, for the same object, after reciting, that it might be necessary and proper, in many cases not therein specified, to require confirmation of written instruments, or allegations, or proof of debts, or of the execution of deeds, or other matters, it is enacted, " That it shall and may be lawful for any justice of the peace, notary-public, or other officer now by law authorized to administer an oath, to take and receive the declaration of any person voluntarily making the same before him, in the form in the schedule to this act annexed ; and if any declaration so made shall be false or untrue in any material particular, the person wilfully making such false declaration shall be deemed guilty of a misdemeanor."

The 19th section of the act authorizes the persons taking such declarations to receive the same fees they would have been entitled to for administering an oath in a similar case prior to the statute.

Under this statute, which declares all voluntary oaths and affidavits to be illegal, the various facts

and statements which require proof in support of a title, or in other similar circumstances, may be verified by means of a declaration before a magistrate, master in chancery, notary, or any other person entitled to administer an oath, which, though not possessing the same religious sanction as an oath, has an advantage which does not belong to voluntary oaths; namely, the fear of civil punishment, which, with those who did not fear to assert that which was false, may have as much, if not greater, influence than was supplied by the peculiar nature of an oath; for though persons were not punishable for false swearing, if the oath was extrajudicial and voluntary, the act has declared all persons wilfully making declarations under its provisions, whether voluntary or not, which are false in any material particular, to be guilty of a misdemeanor.

The following form is prescribed in the schedule to the act, and must always be followed:—

I, A. B., do solemnly and sincerely declare,  
That

and I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an act made and passed in the 5th and 6th years of the reign of his late Majesty, intituled, “An act to repeal an act of the present session of Parliament, intituled, ‘An act for the more effectual abolition of oaths and affirmations taken and made in various departments of the state, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extrajudicial oaths and affidavits,’ and to make other provisions for the abolition of unnecessary oaths.”

This declaration should be subscribed by the declarant, and verified by the magistrate or other person before whom it is made, for which the following form may be used:—Declared at this day of  
before me, M. C.,

A Master Extraordinary in the  
High Court of Chancery.

## CHAPTER XXXVIII.

### SURRENDERS.

(See *Re-Conveyances.*)

*Surrender of a Mortgage-term to merge in the Inheritance on paying off the Mortgage-money.*†

THIS indenture, &c., between (*mortgagee*) of the one part, and (*mortgagor*) of the other part. [*Recite the mortgage creating the term.*] And whereas the said Recital. sum of L. still remains due and owing upon the said recited security, all interest for the same having been paid up to the day of the date of these presents. And whereas the said (*mortgagor*) hath requested the said (*mortgagee*) to accept payment of the said sum of L. so due and owing as aforesaid, and to assign and surrender the said mortgage term created by the said in part recited indenture of, &c., to the intent that the same may become merged and extinguished in the freehold and inheritance of the said premises. Now, this indenture witnesseth, that, in consideration of the sum of Witnesseth. L. in hand, &c., in full satisfaction and discharge of all principal money and interest now due and owing upon or by virtue of the said recited security, the receipt, &c., he, the said (*mortgagee*), at the request and by the desire of the said (*mortgagor*),

† For the surrender of a life estate, see p. 380.

testified, &c., hath assigned,\* surrendered, and yielded up, and, &c., unto the said (*mortgagor*,) his heirs, [executors, administrators,] and assigns, all and singular the said messuage, &c., hereinbefore particularly described, and which, in and by the said indenture of, &c., were granted and demised unto the said (*mortgagee*,) his executors, administrators, and assigns, for the term of five hundred years, as hereinbefore mentioned, with the several rights, members, and appurtenances, and all the estate, right, title, term of years yet to come and unexpired, of him, the said (*mortgagee*,) in and to the said premises; to the intent that the now residue of the said term of five hundred years may be merged and extinguished in the<sup>b</sup> reversion, freehold, and inheritance of the same premises, now vested in the said (*mortgagor*,) or otherwise cease, determine, and become void, to all intents and purposes whatsoever. [*Add covenant from mortgagee that he had not incumbered.* See p. 89.] In witness, &c.

*Surrender of a term by Indorsement.*

Recital.

This indenture, made, &c., between, &c. Whereas, &c., [*recitals*,] and whereas the said A. B. hath requested the said C. D. to surrender to him the said messuage, &c., for all the residue and remainder of the said term of            years, by the within-written indenture granted therein, to the intent that the same residue may merge and be extinguished in the freehold and inheritance of and in the same premises, which he the said C. D. hath consented and agreed to do in manner hereinafter mentioned. Now, this indenture witnesseth, that, in pursuance of the said recited agreement in this behalf, and in consideration

Witnessing]  
part.

\* For the reason why the word *assign* is used, see p. 391.

<sup>b</sup> If one term is merged in another, the conclusion from this place would be, "said term of            years, created by the said in part recited indenture of            immediately expectant and reversionary thereon, or otherwise," &c.

of the sum of L.      of lawful, &c., to the said C. D. paid, &c., the receipt, &c., he the said C. D. hath assigned, surrendered, and yielded up, and, &c., unto the said A. B., his heirs, executors, administrators, and assigns, all those the messuages, lands, and premises within described, with their several rights, members, and appurtenances, and all the estate, &c.; to the intent and purpose that the residue of the said term of      years therein may be merged and extinguished in the reversion, freehold, and inheritance of the same hereditaments and premises. In witness, &c.

• OBSERVATIONS ON SURRENDERS.

‘A surrender is defined by Sir Edward Coke to be “a yielding up of an estate for life or years to him who hath the immediate estate in reversion or remainder, wherein the estate for life or years may drown by mutual consent.”—Co. Litt. 337 b.

From Sir Edward Coke’s definition, it will appear that a deed, or other written instrument, though framed as a surrender, will not have that operation, unless the estate of the person to whom the surrender is made has the next immediate estate in reversion or remainder to the one proposed to be surrendered; for if there should be any intervening vested estate, whether chattel or freehold, the instrument will be entirely inoperative as a surrender or destruction of the estate, though it may take effect as a conveyance or assignment, if executed in the manner required for passing such estate; and, on the other hand, an instrument, purporting to be a conveyance with the intention of preserving the estate, will have the operation of a surrender, in those cases in which a surrender, if made, would have taken effect.

In considering how far a defective surrender may

\* Doe v. Pickard, 1 Williams Saund. 236 d. Shep. T. 308.



operate as a conveyance, it must be remembered that estates cannot be passed *inter vivos*, except by deed; whereas a simple writing, though not under seal, is all that is required by the statute of frauds to give validity to a surrender.<sup>4</sup>

One thing essential to a surrender is not noticed in the definition given above from Coke. An estate cannot merge in one which is not of equal or higher degree. All terms of years, whatever their relative lengths, are considered as of the same degree; and a term of 1000 years will therefore merge in the one immediately reversionary to it, though it should be but of a year's duration. One estate *pur autre vie* will merge in another, or in an estate for life; but an estate for life will not merge in an estate *pur autre vie*. The estate of a tenant for life, when conveyed to another, becomes an estate *pur autre vie* in the hands of the assignee; therefore, if a tenant for life in remainder should purchase the estate of the tenant for life in possession, such estate would merge; and, consequently, if the purchaser should die the next day, his representatives would not be entitled to retain the property during the residue of the life of the first tenant for life. A tenant for life in remainder, making such a purchase, should not, therefore, take the conveyance to himself, in case he has the legal estate in his own life-estate, but should have it conveyed to a trustee for him, which would prevent its destruction; for a legal estate will not merge in an equitable one; nor, on the other hand, will an equitable particular estate merge in a legal one in remainder.

An estate for life or years will merge in an estate tail; but an estate tail never merges: and though, previously to the act for the abolition of fines and recoveries, a base fee, into which an estate tail had been converted, when the issue in tail, but not the remainders, had been barred, would have merged,

<sup>4</sup> *Farmer v. Rogers*, 2 Wils. 26.

like other base or conditional fees, in the absolute fee-simple in remainder; the 39th section of that act has provided, that a base fee, into which an estate tail is converted, on becoming united with the remainder or reversion in fee, without any intervening estate, shall not merge, but become enlarged into an absolute fee.

Any vested intervening estate in some third party, between the particular estate and the one in remainder, would prevent a merger, during its continuance.<sup>1</sup> A contingent estate, or a right, as that which a widow has to dower before assignment,<sup>2</sup> or an *interesse termini*, not being vested estates, would not be any obstacle in the way of merger. Thus, if an estate were limited, on the marriage of A. B., to himself for life, with remainder to trustees, for a term of years, to commence from his death, with remainder to his children in tail, (without the intervention of the usual limitation to trustees to support the contingent remainder,) with remainder in fee to his father—if by the death of A. B.'s father before the birth of a child, the remainder in fee should descend to, or otherwise become vested in, A. B., his estate for life would merge, notwithstanding the *interesse termini*, in the trustees,<sup>3</sup> and the contingent remainder to the children; and though the term would take effect on A. B.'s death,<sup>4</sup> his children would never derive any benefit from the limitation in their favour.

A term of years which has not yet commenced, (often called a reversionary term, as distinguished from a term of the reversion, which is a term actually running, but, owing to the existence of some particular estate, cannot take effect in possession,) is

<sup>1</sup> *Ante*, p. 157.

<sup>2</sup> *Doe v. Pickard*, 1 Williams Saund. 236.

<sup>3</sup> *Watkins' Conveyancing*, Book i. chap. 6.

<sup>4</sup> *Doe v. Walker*, 5 Barn. and Cress. 111.

<sup>5</sup> 4 Bac. Abr. Leases B.

an *interesse termini*.<sup>\*</sup> The same name is given to that interest which a person has under a common law lease before entry. If the lease (as is always the case in mortgages for a term) is made by way of bargain and sale, the statute of uses supersedes the necessity of entry, and the party has an estate from the execution of the conveyance.

It must not be supposed, from the statement, that an equitable will not merge in a legal estate above made—that the legal and equitable interest in the same estate can exist as separate interests in the same person; for wherever they unite, the equitable merges in the legal. Thus, if the trustee conveyed his legal estate to the equitable owner, his *cestueque* trust, the equitable estate would be merged in the legal; but it is merely to be understood, that an equitable interest in one estate will not merge in the next estate in remainder, whether legal or equitable, nor will a legal estate merge in an equitable one.

The distinction last noticed will show that the law of merger is solely applicable to legal estates, and that in this rule of real property, equity has not followed the law as it generally does, and one equitable estate will not merge in another.

An *interesse termini*, as before stated, will not prevent a merger. It has also been laid down, that, so long as it retains that character, it is incapable of destruction by merger,<sup>1</sup> though it may be released by the party entitled to it.

A surrender to one joint tenant will enure for the benefit of his co-tenants; but if the particular estate becomes vested in one of several joint tenants of the next estate in remainder, by operation of law, or by a grant or conveyance not intended to operate as a

<sup>\*</sup> Watkins' Conveyancing, Book ii. chap. 4. Co. Litt. 270 a.

<sup>1</sup> Doe v. Walker, 5 Barn. and C. 111; 4 Bac. Abr. Leases R. S. T. 303.

surrender, a merger would take place as to his share only."

It is laid down in the text-books on this subject, that, in order to a merger, the estates must be vested in the same person, in the *same right*. The rights there intended are legal ones, or such only as a court of law will recognize. Thus, the circumstance of a person being entitled to one of the estates, as trustee only, will not prevent a merger at law, whatever relief a court of equity might give;" but a term which a man has in right of his church, or his wife, or as executor or administrator, does not necessarily merge in an estate of freehold which he has in his own right; for a man may have a freehold in his own right, and a term in *auter droit*."

In the passage last cited from Coke, it is also laid down, that a man cannot have, consisting together, a term in his own right, and a freehold in *auter droit*, which, of course, must be understood to apply to estates immediately reversionary on each other. But that position is open to several exceptions; for it appears to be clear, that a merger of the term will not take place, unless the coalition of the estates is occasioned by the party's own act. Thus, where the fee descended on the wife of the party entitled to the term, it was held, that, inasmuch as the union of the estates was not the act of the termor, no merger took place."

The words "surrender," and "yield up," though the most appropriate, are not the only words by which a surrender may be effected. Any language sufficient to show the intention of the parties will be sufficient.<sup>1</sup>

<sup>1</sup> Co. Litt. 192 a. Shep. Touch. 308.

<sup>2</sup> Thorn v. Newman, 3 Swanst. 603.

<sup>3</sup> Co. Litt. 338 b.

<sup>4</sup> Lady Platt v. Heap, Cro. Jac. 275; 1 Bulst. 118.

<sup>5</sup> Farmer v. Rogers, 2 Wils. 26; Smith v. Mapleback, 1 Durn. and E. 441.

## CHAPTER XXXIX.

### WARRANTS OF ATTORNEY,

#### AND DEFEASANCES THEREON.

**Attorneys.** To C. D. and E. F., attorneys of her Majesty's Court of Queen's Bench,<sup>\*</sup> at Westminster, jointly and severally, or to any other attorney of the same court.<sup>†</sup>

**Authority.** These are to desire and authorize you, the attorneys above named, or any one of you, or any other attorney of the said court, to appear for me, A. B., of, &c., in the said court of in term next, or at any time thereafter, and then and there receive a declaration for me in an action of debt at the suit of

**Amount.** G. H., for the sum of two hundred pounds, [*usually double the debt,*] and thereupon to confess the same action, or else to suffer a judgment by *nil dicit*, or otherwise, to pass against me in the same action, and to be thereupon forthwith entered up against me of record of the said court, for the said sum of two hundred pounds. And I, the said A. B., do hereby further authorize and empower you, the said attorneys, or any one of you, after the said judgment shall be entered up as aforesaid, for me in my name, and as my act and deed, to sign, seal, and execute a

**Release of errors.**

<sup>\*</sup> Common Pleas, or Exchequer, as the case may require.

<sup>†</sup> It is directed to two attorneys, to provide against the death of one before the judgment is entered up. (Wils. 312.)

good and sufficient release in the law to the said G. H., his heirs, executors, and administrators, of all and all manner of error and errors, writ and writs of error, and all benefit and advantage thereof, and all misprisions of error and errors, defects and imperfections whatsoever, had, made, committed, done, or suffered, or to be had, made, committed, done, or suffered, in, about, touching, or concerning the aforesaid judgment, or in, about, touching, or concerning any writ, warrant, process, declaration, plea, entry, or other proceedings whatsoever, of or in any way concerning the same. And for what you the said attorneys, or any one of you, shall do, or cause to be done in the premises, or any of them, this shall be to you, and every of you, a sufficient warrant and authority. In witness whereof, I have hereunto set my hand and seal, the       day of       , in the       year of the reign of our Sovereign Lady Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, Defender of the Faith, and in the year of our Lord one thousand eight hundred and forty       .

Signed, sealed, and delivered, by the said A. B. in my presence, and I declare myself to be attorney for the said A. B., and that I subscribe as such attorney.       I. K., of, &c.

#### DEFESANCE.\*

Memorandum, that the above written warrant of attorney is given for securing the payment by the above-named A. B., to the above-named C. D., of the sum of L.       , and interest thereon, after the rate of, &c., on, &c., being the days and times men-

\* The defeasance, if indorsed or underwritten, does *not* require a stamp; but if made by a separate instrument, it will require one, and must be by *deed*, which should recite the material parts of the instruments referred to, and must be made between the same parties as are parties to the warrant of attorney. (Wood's Inst. lib. 2.)

tioned and reserved for the payment thereof, by a certain indenture of release and mortgage bearing even date herewith, and made between the said A. B. of the one part, and the said C. D. of the other part, whereby and by virtue of a bargain and sale therein mentioned, certain lands and hereditaments, situate at \_\_\_\_\_, therein more particularly mentioned, were conveyed and assured unto and to the use of the said C. D., his heirs and assigns, subject to redemption on payment of the aforesaid sum of L. \_\_\_\_\_ and interest after the rate and at the time hereinbefore in that behalf mentioned. And it is hereby agreed and declared, between and by the said parties, that no execution or other process shall be issued on the judgment so to be entered up by virtue of the within written warrant of attorney, until default shall happen to be made in payment<sup>a</sup> of the aforesaid principal and interest moneys, or some part thereof, on the days and times hereinbefore mentioned or referred to; but, in case default shall be made in payment thereof, or of any part thereof, then it shall be lawful for the said C. D., his executors, administrators, or assigns, immediately thereupon to issue execution, or cause execution to be issued upon the said judgment for such sum or sums of money as shall then be due, for principal and interest, or either of them, by virtue of the said [*bond or indenture of mortgage*.] And it is hereby agreed and declared, that it shall not be necessary for the said C. D., his executors, administrators, or assigns, to revive, or cause to be revived, the said judgment,

<sup>a</sup> If the money is payable by instalments, "of any of the said instalments, or any part thereof respectively; but in case default shall be made in payment of any or either of such instalments, or any part thereof respectively, on any or either of the days whereon the same are made payable as aforesaid, then it shall be lawful for the said C. D., &c. &c., for the whole amount of the said principal sum of L. \_\_\_\_\_ or such part thereof as shall be then unpaid, and all interest which may be due thereon; and it is hereby," &c.

or to do any act, matter, or thing for keeping the same on foot, although there shall have been no proceeding thereon within one year immediately preceding the issuing of such execution: And it is further declared and agreed, that, after full payment of the sum and sums of money intended to be secured as aforesaid, and all the costs, charges, and expenses (if any) occasioned by the non-payment thereof, the said C. D., his executors, administrators, or assigns, shall and will, at the request, costs, and charges of the said A. B., his heirs, executors, administrators, or assigns, acknowledge satisfaction, or cause satisfaction to be acknowledged upon the said judgment so to be entered up as aforesaid. In witness, &c.

*\*Defeasance in a Warrant of Attorney to secure an Annuity.*

Whereas [*recite the instrument by which the annuity is granted.*] And whereas the said A. B. hath executed the above-written warrant of attorney, as a further security for the payment of the said annuity or yearly sum of L. \_\_\_\_\_, on the several days, and in manner hereinbefore mentioned; and it is intended that judgment shall be forthwith entered up by virtue of the said warrant of attorney. Now, therefore, it is hereby agreed and declared, between and by the said A. B. and C. D., that no execution shall be issued upon the judgment so to be entered up as aforesaid, until the whole or some part of one of the said quarterly portions of the said annuity or yearly sum of L. \_\_\_\_\_, or of the proportional part thereof, shall be in arrear and unpaid for the space of \_\_\_\_\_ days next after any of the days so appointed for payment thereof respectively as aforesaid; but, in case any one or more of such quarterly portions, or such proportional part of the said annuity as aforesaid, or some part thereof respectively, shall be so in arrear and unpaid, then, and in such case, and from time to time, so often as the same shall



happen, it shall be lawful for the said C. D., his executors, administrators, or assigns, to issue execution, or cause execution to be issued upon the said judgment for the amount of arrears, which shall, from time to time, be due, and all costs, charges, and expenses occasioned by the non-payment thereof, without issuing a writ of *scire facias*, or doing any other act for reviving the said judgment, although there shall have been no prior proceeding thereon within one year next preceding the issuing such executions, or although the said A. B. shall have departed this life: And it is hereby further agreed and declared, that, after the determination of the said annuity, and full payment of all arrears thereof, and all the costs, &c., [*conclude as in preceding form.*] In witness, &c.

*Warrant of Attorney in Ejectment.*

**Attorneys.** To E. F. and G. H., gentlemen, two of the attorneys of Her Majesty's Court of Queen's Bench<sup>\*</sup> at Westminster, jointly and severally, or to any other attorney of the same court.

**Authority.** These are to desire and authorize you, the attorneys above-named, or any one of you, or any other attorney of the Court of Queen's Bench aforesaid, to appear for me, J. B., of, &c., in the said court, as of this present (or last) term, or of any other subsequent term; and then and there to receive a declaration for me in an action of trespass and ejectment at the suit of John Doe, on the demise of A. B., for four messuages, [*as in the declaration of ejectment,*]

**Premises.** with the appurtenances, situate in the parish of, &c., in the county of, &c., which the said A. B., on the day of, &c., in the year of our Lord 184 , had demised to the said John Doe, for the term of seven years from thence next ensuing, and fully to be complete and ended, and thereupon to confess the same action, or else to suffer judgment by *nil dicit*,

<sup>\*</sup> Or Court of Common Pleas or Exchequer.

or otherwise, to pass against me in the same action, and to be thereupon forthwith entered up against me, of record in the said court, for the recovery of the said term yet to come of and in the said tenements, with the appurtenances, and also for the recovery of one shilling damages. [*if any thing is to be paid for mesne profits, these damages may be put at the amount required instead of a nominal sum,*] besides costs of suit: And I, the said J. B., do hereby further authorize and empower you, the said attorneys, or any one of you, after the said judgment shall be entered up as aforesaid, for me and in my name, and as my act and deed, to sign, seal, and execute a good and sufficient release in the law to the said A. B., his heirs, executors, and administrators, of all and all manner of error and errors, writ and writs of error, and all benefit and advantage thereof, and all misprisions of error and errors, defects and imperfections whatsoever, had, made, committed, done, or suffered, in, about, touching, or concerning the aforesaid judgment, or in, about, touching, or concerning any writ, warrant, process, declaration, plea, entry, or other proceeding whatsoever, of or any way concerning the same: And for what you, the said attorneys, or any one of you, shall do, or cause to be done, in the premises, or any of them, this shall be to you, and every of you, a sufficient warrant and authority." In witness, &c.

Release of errors.

\* Memorandum: The above (or "within-written") warrant of attorney is given for the purpose of securing to the said (or "within-named") A. B., the delivering up to him on the, &c., next, of a certain messuage, farm, and lands, called, &c., situate, &c., [and also the payment to him of the sum of, &c., in satisfaction of all mesne profits and damages up to that time;] and it is agreed between the said parties that no judgment shall be entered up, nor writ of possession or other execution issued, unless the said J. B. shall make default in delivering up such possession at the time aforesaid, [or "on payment of the said sum of, "&c.,] but in case he shall make default, judgment may be entered up, and a writ or

The defence on a warrant of attorney in ejectment.

## \*OBSERVATIONS ON WARRANTS OF ATTORNEY.

The mode of executing warrants of attorney in personal actions is regulated by the act for the abolition of imprisonment for debt.\* The 9th section of that act requires the presence of an attorney<sup>†</sup> of one of the superior courts on behalf of the party executing "expressly named by him, and attending, at his request, to inform him of the nature and effect of such warrant or cognovit, before the same is executed;" and directs that such "attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be attorney for the person executing the same, and state that he subscribes as such attorney."

The requisition of the act must be strictly complied with in every, even the minutest particular; and so strict are its provisions, that a warrant of attorney, not executed in compliance with them, would be invalid, though the party at the time of executing it actually was informed of and understood its nature and effects, and, therefore, did not stand in need of that protection which was provided by the act.

An objection on the ground that the attorney who attested the execution was, in the first instance, suggested by the party in whose favour it is given, or his attorney or clerk, will not prevail, if he was actually adopted by such person, and the suggestion was not

writs of possession issued, as also execution for the said damages and costs, on which may be levied the costs of such writ or writs of possession, and of such execution as aforesaid, besides all sheriffs' poundage, officers' fees, and other incidental expenses.

\* 1st and 2d Victoria, c. 110, stated *ante*, p. 146.

† An uncertificated attorney is not sufficient, *Vesey v. Dodd*, Tidd, Sup. 57; but if the party introduces him as the attorney attending on his behalf, he will not, it would appear, be allowed to take an objection on the ground of his being uncertificated; *Cox v. Cannon*, 4 Bing. N. S. 453.

made with any fraudulent or improper intention ;<sup>a</sup> but it is a circumstance which, as stated by Mr Baron Gurney, in the case cited below, though it does not itself imply fraud, ought to be narrowly watched.

It would appear from what fell from Lord Abinger, in the case of *Chipp v. Harris*, cited below, that objection to warrants of attorney, on the ground that they are not executed according to the provisions of the act, cannot be made by third parties. The attorney must not be the attorney of the plaintiff;<sup>b</sup> and an objection on this ground would apply not only to the actual attorney, but to any agent employed on the plaintiff's part, though he might not be his regular town agent, but an attorney in the country employed in some part of the proceedings.<sup>c</sup> There has not yet been any reported decision on the point ; but it would seem that the attestation by an attorney acting as the clerk of an attorney, who is not competent to attest a warrant of attorney, would not be sufficient.

As the provisions of the act, like the previous rules of court, applicable to warrants of attorney, executed by prisoners, were intended to protect persons from the consequences of acts done by them in ignorance of their effect, they have been held not to apply to cases where the party executing the warrant of attorney is himself an attorney, in which case no other attorney need be present or attest its execution.<sup>d</sup>

Warrants of attorney, unlike cognovits, are liable to stamp-duties differing according to the object for which they are given, which have been before noticed in the chapter on Stamps;<sup>e</sup> but if they are given as a collateral security with any other instrument

<sup>a</sup> *Taylor v. Nicholl*, 9 L. J. N. S. Ex. 78.

<sup>b</sup> *Todd v. Gompertz*, 6 Dowl. P. C. 296.

<sup>c</sup> *Mason v. Kiddle*, 5 Mees. and Wels. 513, 9 L. J. N. S. Ex. 37.

<sup>d</sup> *Chipp v. Harris*, 9 L. J. N. S. Ex. 64.

<sup>e</sup> See *ante*, p. 670.

upon which the *ad valorem* duty is chargeable, they are liable only to a stamp of L.1.

Judgment may be signed on a warrant of attorney, as a matter of course, at any time within a year and a day from its execution ; but after that period leave of the court, or a judge, must first be obtained, which, within ten years, will be granted on proof by affidavit of the execution of the warrant of attorney of the amount due on it, and the fact of the defendant having been alive within a short time previous to the making of the affidavit ; but after a period of ten years, a more formal application to the court will be necessary in order to obtain its permission to sign judgment.

By the 2d sect. of the 3d George IV., c. 39, it is provided, that if, after twenty-one days from the execution of a warrant of attorney, a commission of bankruptcy shall issue against the person who shall have given the same under which he shall be found a bankrupt, such warrant of attorney, and any judgment and execution thereon, shall be deemed fraudulent and void against his assignees, unless such warrant of attorney, or a copy thereof, and of its attestation, defeasance, and indorsements, together with an affidavit of the time of the execution thereof,<sup>\*</sup> shall have been filed with the clerk of the docketts and judgments in the Queen's Bench, or unless judgment shall have been signed, or execution issued upon such warrant of attorney within such period, and such assignees are authorized to recover, for the use of the bankrupt's creditors, any money or effects that may have been levied or seized under such judgment and execution.

Under the 4th section of that act, a warrant of at-

<sup>\*</sup> Gray's Country Attorney's Practice, Warrants of Attorney.

<sup>†</sup> If the affidavit is defective on this point, the warrant of attorney will be void against the assignees ; *Dillon v. Edwards*, 2 Moo. and Payne, 550.

torney or cognovit, given subject to any defeasance or condition, will be void unless "such defeasance or condition shall be written on the same paper, or parchment, on which such warrant of attorney or cognovit shall be written before the time when the same, or a copy thereof respectively, shall be filed." But this clause has been held to make such warrants of attorney void only as against assignees in bankruptcy; as against all other persons, therefore, except assignees under the insolvent debtors' act, (to whom the provisions of this act have been extended by 1st and 2d Victoria, c. 110, sec. 60,) a warrant of attorney would be good, though the defeasance be written on a distinct piece of paper.

To obtain the benefit of the extended force given to judgments by the 1st and 2d Victoria, c. 110, judgments entered up on warrants of attorney must be registered in the Common Pleas in the manner pointed out by the 19th section of that act, and the 3d section of the 2d Victoria, c. 11, which registry, according to the 4th section of the latter act, must be renewed every five years, or it will become "void against lands, tenements, and other hereditaments, as to purchasers, mortgagees, or creditors."

The value of a warrant of attorney given by a trader is very much affected by the 108th section of the present bankrupt act,<sup>a</sup> which enacts, that "no creditor having security for his debt, or having made any attachment in London, or any other place, by virtue of any custom there used, of the goods and chattels of the bankrupt, shall receive upon any security or attachment more than a rateable part of such debt, except in respect of any execution or extent served, and levied by seizure upon, or any mortgage of or lien upon any part of the property of such bankrupt before the bankruptcy, provided that no creditor, though for a valuable consideration,

<sup>a</sup> *Morris v. Mellin*, 6 B. and Cr. 446.

<sup>b</sup> 6th George IV., c. 16.

who shall sue out execution upon any judgment obtained by default, confession, or *nil dicit*, shall avail himself of such execution to the prejudice of other fair creditors, but shall be paid rateably with such creditors."

Under this section a creditor would not be able to derive any benefit from an execution, which is not completed by seizure and sale before the commission of an act of bankruptcy by the trader, but must refund to the assignees what he might receive, and be entitled only to be paid rateably with the other creditors.<sup>1</sup> If the act of bankruptcy is committed whilst the sheriff is in possession, and before a sale, the execution would be defeated;<sup>2</sup> but if the sale is completed when the act of bankruptcy is committed, it is immaterial whether the return-day of the *fiery facias* has arrived.<sup>3</sup>

The rather obscure proviso at the end of the section of the bankrupt act above cited, has been decided to apply only to such creditors as are mentioned in the commencement of the clause, namely, creditors having security; and that, therefore, an execution levied, or a judgment on a warrant of attorney, (though it comes under the description of a judgment obtained by default, confession, or *nil dicit*,) will be sustained if the seizure and sale are complete before the act of bankruptcy.<sup>4</sup>

The strictness of this act has been somewhat relaxed by the 7th section of the 1st William IV., c. 7, which provided that no judgment signed, or execution issued, on a cognovit signed after declaration or judgment by default, confession, or *nil*

<sup>1</sup> Wymer v. Kemble, 6 Barn. and Cress. 479, and 8 Dowl. and Ryl. 511.

<sup>2</sup> Motley v. Buck, 8 Barn. and C. 160, and 2 M. and R. 68.

<sup>3</sup> Higgins v. M'Adam, 3 Young and J. 1.

<sup>4</sup> Wymer v. Kemble, 6 Barn. and C. 479, and 9 Dowl. and R. 511; Taylor v. Taylor, 5 B. and C. 392, and 8 Dowl. and R. 59.

*dicat*, in any action commenced adversely, shall be deemed within its provisions; but it has been decided, as is apparent on attentively reading the clause, that it does not extend to judgments on warrants of attorney, however free from collusion they may be.<sup>m</sup>

By the 61st section of the 1st and 2d Victoria, c. 110, it is provided, that no person shall, after the imprisonment of an insolvent debtor, avail himself of any execution upon a judgment on a warrant of attorney, cognovit, or bill of sale, either by seizure or sale of his property, or by sale of any property previously seized, but such person shall be a creditor for his debt under the act.

An insolvent debtor, before he is entitled to his discharge under the provisions of the insolvent act,<sup>n</sup> must execute a warrant of attorney authorizing a judgment to be entered up in the name of his assigns, for the amount of the debts stated in his schedule, upon which the court will direct execution to be issued against the insolvent or his representatives, in case of his obtaining any property or leaving assets for the purpose of having what shall be so raised distributable amongst the scheduled creditors. Such warrant of attorney need not be executed as pointed out by the 9th section of the act, and is exempted from the provisions of the before-mentioned act of the 3d George IV., c. 39, and it need not be revived by *sciens facias*.

A warrant of attorney, by an infant, is absolutely void, even though given by him for the purpose of collusion, knowing its invalidity.<sup>o</sup>

<sup>m</sup> Crossfield v. Stanley, 4 Barn. and Adol. 87, S. C. 1 New. and M. 669.

<sup>n</sup> 1st and 2d Victoria, 110, see sect. 37.

<sup>o</sup> Sanderson v. Marr, 1 H. Bl. 75; Selw. Nisi Pr. 153.



## CHAPTER XL.

### WILLS.

- Form in the beginning of a will.** **THIS** is the last will and testament of me, A. B., of, &c., made this       day of, &c. First, I give, &c.
- Ib.** In the name of God, amen. I, A. B., of, &c., being of sound mind, memory, and understanding, do make, publish, and declare this to be my last will and testament, in manner following; (that is to say,) first, I give, &c.
- Another form.** I, A. B., of, &c., do hereby revoke all wills, codicils, and other testamentary dispositions made by me, at any time or times heretofore, and do publish and declare this to be my last will and testament, in manner and form following; (that is to say.)
- Appointment of executors.** And I nominate and appoint C. D. and E. F. executors thereof (*or*) of this my will.
- Guardians.** And I appoint my said wife, during her life, [or until she shall marry again,] and after her decease, [or marriage,] I appoint the said A. B. and C. D., and the survivor of them, guardians and guardian of the persons and estates of my children, during their respective minorities.
- Funeral.** I desire that I may be buried in       church-yard, at as little expense as possible.
- Directions as to debts.** In the first place, I direct that all my just debts, funeral and testamentary expenses, be fully paid and satisfied by my [said] executors [hereinafter named,]

out of my personal estate, as soon as conveniently may be after my decease.

I give and bequeath the use and enjoyment of all my household furniture, plate, linen, and china, to my dear wife M. B., during the term of her natural life; and from and after her decease, I give and bequeath the said household furniture, &c., unto my two children, C. B. and D. B., their executors, administrators, and assigns, in equal shares and proportions as tenants in common. Use of furniture.

I give and bequeath unto my wife M. B. all her wearing apparel, watches, trinkets, and other articles of dress, and ornaments of her person. Wearing apparel.

I give and bequeath all my farming stock and utensils whatsoever, which shall be in or about my farm at to my son J. B. Farming stock.

I give and bequeath unto L. M., of, &c., the debt or sum of L. , which he owes to me on his bond; and I desire my said executors to cancel and deliver up to him the said bond, or any other security I may hold for the said debt; and I direct that this bequest shall, notwithstanding the death of the said L. M. in my lifetime, operate and enure for the benefit of the executors and administrators of the said L. M., and as a complete and perfect release of the said debt. Release of debt.

I give and bequeath to M. N. the sum of L. three per cent. consolidated bank annuities now standing in my name in the books of the Governor and Company of the Bank of England, [*if it is intended* Money in the funds.

\* If a debt, due to the testator, be bequeathed to the debtor, the same will lapse on the death of the legatee, and the debt will subsist; *Maitland v. Adair*, 3 Ves. 231; therefore, to prevent any question, it will be advisable to add, "and I direct that this bequest shall not be considered as a personal legacy, or as intended for the benefit of the said A. B. only, but that in case the said A. B. shall die in my lifetime, his representatives shall have and be entitled to the benefit thereof." (See *Sibthorp v. Moxom*, 3 Atk. 579; *Elliot v. Davenport*, 3 Vern. 521; S. C. 1 P. Wms. 83.)

*not to be a specific legacy, add,* and if it shall happen that, at the time of my decease, I shall not be possessed of that amount of L.3 per cent. consolidated bank annuities, then I direct my executors to purchase or make up the same out of my personal estate, and transfer the same to the said M. N. for his own absolute use.<sup>1</sup>

Pecuniary legacies.

I give and bequeath unto A. B. the sum of L.

I give and bequeath the following sums to the several persons hereinafter named; that is to say, to K. L., of, &c., the sum of L. ; to C. M. the sum of L. , &c.

Directions as to vesting.

I give and bequeath to D. I. the sum of L.

and I direct that the same shall become a vested interest in the said D. I. immediately upon my decease; but that the payment thereof shall be postponed till he shall attain the age of twenty-one years, [*or*] and I direct that the said legacy shall not vest in, or be paid to him, unless and until he shall attain his age of twenty-one years; but he shall, nevertheless, be entitled to any interest that may arise therefrom in the mean time.

Legacy to creditors.

I give and bequeath unto J. D. the sum of L.

and I direct that the same shall be accepted by him [*or* not be taken] in satisfaction of any debt or sum of money that may be due and owing from me to him at the time of my decease.

To servants.

I give and bequeath to each of my servants, who shall be living with me at the time of my decease, the sum of L. over and above the wages which may then be due to them respectively.

<sup>1</sup> This bequest being of the identical stock of which the testator was possessed, would be specific, and, consequently, unless the directions here given were added, the bequest would fail in case the testator should part with his stock in his lifetime. See the cases of *Ashton v. Ashton*, 3 P. Wms. 384; *Sleech v. Thorrrington*, 2 Vez. 561; *Gillaume v. Adderley*, 15 Ves. 385; and *Dummer v. Pitcher*, 5 Sim. 35, and 2 M. and K. 262.

<sup>2</sup> See observations on the vesting of legacies, *post*.

I give and bequeath unto each of them, the said J. K. and L. M., the sum of L. , as an acknowledgment for the trouble they may have in the execution of this my will, [or] and I direct that the same shall be paid to them notwithstanding they may decline to prove this my will, or to act in the execution of the trust hereof. To executors.

I give and bequeath unto the treasurer, for the time being, of the Church Missionary Society, the sum of L. to be applied by him for the purposes of such society, and I direct that the receipt of such treasurer, for the time being, shall be a sufficient discharge to my executors for the same. To an unincorporated society.

And I do hereby devise all such messuages, lands, tenements, and hereditaments, as are vested solely in me, upon any trust, or by way of mortgage, in respect of which the equity of redemption shall be subsisting at the time of my decease, with their respective rights, members, and appurtenances, unto their heirs, executors, administrators, and assigns, according to the nature and quality thereof respectively upon trust, to hold or dispose of the said trust-estates, in the manner in which they ought to be held and disposed of, pursuant to the trusts thereof, and upon payment of the money secured on mortgage, to convey or assign the estates in mortgage to the person or persons entitled thereto for the time being; but I direct that the money secured by such mortgages shall be considered as part of my personal estate. Devise of trust and mortgage estates.

I give and devise to A. B., of, &c., and his assigns, during his life, the annual sum or yearly rent-charge of L. , without any deduction whatsoever, to be paid to him by four quarterly payments, and the first of such payments to be made on such of the same days as shall first happen after my decease; and I charge the same on [*state the premises to be charged with the annuity.*] And my will is, that, in case the same annual sum or yearly rent-charge, or any part thereof, shall be behind and un- Bequest of an annuity, with a power of distress.

paid for the space of fifteen days next over or after any of the aforesaid days of payment, then and so often it shall and may be lawful to and for the said A. B. and his assigns to enter upon all and every or any part of the said hereditaments charged with the said annual sum or yearly rent-charge as aforesaid, and to distrain for the same, or for so much thereof as shall be so in arrear, and all costs and charges occasioned by the non-payment thereof; and such distress to sell, in like manner as for rent reserved by lease or common demise.

Bequest of  
stock in  
trade.

Whereas I have for some time past carried on the business of, &c., at, &c., and whereas I am desirous that the said business should be carried on after my decease, for the benefit of my wife and children, in manner hereinafter mentioned. Now, therefore, I do hereby give and bequeath my said business of, &c., and all my interest therein, and all my stock and effects now or hereafter to be employed therein, and all moneys and debts which shall belong and be due and owing to me at the time of my decease, for or on account of the said business, with the premises

If the annuity  
be to cease on  
bankruptcy.

" Provided also, and I declare my will to be, that in case the said A. B. shall, at any time or times, become bankrupt, or take the benefit of any act or acts of parliament for the relief or discharge of insolvent debtors, then, and in either of the said cases, the said annuity shall cease."

Proviso  
prevent the  
assignment of  
an annuity.

Provided also, and I do hereby expressly declare and direct, "that in case the said C. D. shall alien, sell, assign, incumber, or transfer, or in any manner dispose of or anticipate the said annuity or yearly sum of L. , or any part thereof, then, and in such case, and from and immediately after such alienation, sale, assignment, or transfer, the same annuity or yearly sum shall cease, determine, and be void, and shall sink into, and become part of, the residue of my personal estate and effects." As to these provisos, see *Dommatt v. Bedford*, 3 Ves. 149, 6 T. R. 684; *Brandon v. Robinson*, 18 Ves. 429; *Lear v. Leggett*, 2 Sim. 479, and 1 Russ. and M. 690; and *Whitfield v. Brockett*, 2 Keen, 608, and *ante*, 647.

employed in or connected with the carrying on of the said business, unto the said [*trustees,*] their executors, administrators, and assigns, upon trust, &c.

I give, devise, and bequeath unto C. D., of, &c., and E. F., of, &c., their heirs, executors, administrators, and assigns, all my freehold, leasehold, and copyhold messuages, farms, lands, tenements, and hereditaments, wheresoever situate, with their rights, members, and appurtenances, to hold to them, their heirs, executors, administrators, and assigns, according to the nature and tenure of the same premises, upon trust, that they, the said, &c., or the survivor of them, his heirs, executors, administrators, or assigns, do and shall, by sale or mortgage of the same, or a competent part thereof, or by, with, and out of the rents, issues, and profits to arise therefrom in the meantime, or by all or any of the ways and means aforesaid, or by such other ways and means as to them or him shall seem meet, raise and levy the sum of, &c., [*or "such sum and sums," &c.*] And I declare and direct, that the receipt or receipts of the said [*trustees,*] or the survivor of them, his executors, administrators, or assigns, shall be a sufficient discharge, or sufficient discharges, for the purchase or mortgage-money that shall or may be agreed to be paid or advanced, and that the person or persons paying or lending the same, his, her, or their heirs, executors, administrators, or assigns, shall not be answerable for any loss, mis-application, or non-application thereof respectively.

General devise of estates, in trust, to raise money by sale or mortgage.

And I do hereby declare, that the said trustees or trustee, for the time being, shall and do stand and be possessed of such part of my personal estate as shall consist of money, and of the moneys to arise from such other part of my said personal estate as I have hereinbefore directed to be converted into money, and of the moneys to arise from the sale of the premises hereinbefore directed to be sold, upon trust that they, the said trustees or trustee, for the time being, do and shall, with and out of such moneys, pay, satisfy, and discharge all my just debts, funeral

Direction for trustees to invest money.

Declaration  
as to the  
trusts.

and testamentary expenses, and do and shall lay out and invest the residue of the said moneys which shall remain, after answering the purposes aforesaid, in their or his names or name, in the parliamentary stocks or public funds of Great Britain, or at interest on real securities in England or Wales; and do and shall, from time to time, alter, vary, and trans-  
pose the said trust-moneys, so to be laid out and invested as aforesaid, for or into other stocks, funds, and securities, of the like nature, at their or his discretion. And I do hereby declare, that the said trustees or trustee, for the time being, shall stand and be possessed of and interested in the said trust-moneys, and the stocks, funds, and securities, in which the same shall be invested, and the interest, dividends, and annual produce thereof, upon and for the trusts, intents, and purposes hereinafter expressed and declared, of and concerning the same; (*that is to say,*) upon trust, &c.

A devise in  
fee-simple.

I give and devise all that my estate called M., with the rights, members, and appurtenances thereunto belonging, situate, &c., unto C. D., of, &c., his heirs and assigns for ever.

Devise to an  
infant.

I give and devise all that, &c., unto C. D., son of E. D., of, &c., his heirs and assigns for ever; but in case the said C. D. shall depart this life before he shall attain the age of twenty-one years, and without leaving lawful issue him surviving, then I give and devise the said, &c., unto, &c.

Testatum.

In witness whereof, I have hereunto set my hand and seal, this day of in the year of our Lord 18 .

In witness whereof, I have to this my last will and testament, comprised in five sheets of paper, set my hand and seal, (to wit) my hand at the foot of each of the four preceding sheets of paper, my seal at the top of the said sheets, where all the said sheets are joined together, and my hand and seal to this fifth and last sheet, this, &c.

Attestation.

Signed, sealed, published, and declared, by the above-named A. B., the testator, as and for his last will and testament, in the presence of us, who, at

his request, in his presence, and in the presence of each other, have subscribed our names as witnesses thereto.

The writing contained in this and the four preceding sheets of paper was signed, &c.

There must, in all cases, be two attesting witnesses, and it is necessary that the execution, or acknowledgment of the execution of the will, should be at a time when all the witnesses are present.\*

Though not necessary, it may be advisable that the testator and witnesses should sign not only the last sheet, but all the preceding ones, as thereby any alteration would be more easily detected.

### *Exercise of a Power by Will.*

Whereas, &c. [*recite the instrument creating the power.*] Now I, the said A. B., pursuant to, and by force and virtue, and in exercise and execution of, the power or authority to me for this purpose, given or reserved by the said indenture of, &c., as hereinbefore is mentioned, and of every other power or authority in anywise enabling me in this behalf, do, by this my last will and testament, direct, limit, and appoint, that all and every the said messuages, &c., with their appurtenances, shall go, remain, and be, unto, and to the use of, &c.†

### *Will of Freehold and Personal Estate, in trust for Wife, Children, and Grandchildren.*

This is the last will and testament of me, A. B., of, &c. I direct all my just debts, funeral expenses, and the expenses of proving this my will, to be paid and discharged out of my personal estate, as soon as conveniently may be after my decease, by my executrixes hereinafter named. I give and devise all those my two freehold messuages or tenements, call-

Debts and funeral expenses to be paid.

Devises his two freehold messuages to his wife for life, so long as she continues his widow.

\* Sec. 9 of 1st Victoria, cap. 26, *ante*, 182.

† Here may be added, "And I do hereby give and devise the same unto," &c.

\* As to the execution of powers by will, see *ante*, p. 182, and *post*. p. 712.



And after her  
decease, or  
marrying  
again, devise  
over.

Bequeaths to  
his trustees  
all his furni-  
ture, &c.,  
and to make  
inventories.

To permit his  
wife to enjoy  
for her life, or  
so long as she  
continues his  
widow.

ed, &c., situate, &c., in the occupation of, &c., with the out-buildings, yards, gardens, and appurtenances thereunto belonging, unto my wife, E. B., and her assigns, (she and they keeping and maintaining the same in a good and substantial state of repair,) for and during the term of her natural life, (in case she shall so long continue my widow;) and from and after her decease, or from and after her marrying again, (in case she shall marry again,) as the case may be, then I give and devise the said two messuages or tenements and premises, with their appurtenances, to my daughter, E. B., her heirs and assigns, for ever. I give and bequeath to C. D., of, &c., and E. F., of, &c., their executors, administrators, and assigns, all my household furniture, plate, linen, and china, whatsoever, which shall belong to me at the time of my death, upon trust that they, the said [*trustees,*] and the survivor of them, and the executors and administrators of such survivor, do and shall, as soon as conveniently may be after my decease, take, or cause to be taken, an inventory<sup>7</sup> of all such household furniture, plate, linen, and china, and shall make, or cause to be made, two fair copies thereof, and shall cause the same to be signed by my said wife, and shall deliver one copy thereof to my said daughter, E. B., and shall keep the other copy thereof in their own possession. And do and shall permit my said wife to have the use, occupation, and enjoyment of all such household furniture, plate, linen, and china, for and during the term of her natural life, in case she shall so long continue my wi-

<sup>7</sup> In case of goods being bequeathed to a person for life, it is advisable to direct an inventory to be taken of the same, as the tenant for life cannot be compelled to give security; but the court, in the absence of such direction in the will, will compel an inventory to be made and signed by him, and to be delivered to the person next in succession, (*Bill v. Kinaston*, 2 Atk. 82; *Slanning v. Style*, 3 P. Wms. 335; *Southey v. Lord Somerville*, 13 Ves. 486.)

dow ;" and from and after her decease, or after her marrying again, (in case she shall marry again,) as the case may be, then upon trust to deliver such household furniture, plate, linen, and china, to my said daughter, E. B., her executors, administrators, and assigns, to and for her and their own use and benefit. I give and bequeath to my said daughter, E. B., the sum of L. , to be paid to her by my executrixes hereinafter named, within twelve calendar months after my decease. And all the rest and residue of my estate and effects whatsoever and wheresoever, (not hereinbefore otherwise disposed of,) I give and bequeath unto the said [*trustees*,] their executors, administrators, and assigns, upon trust ; [*see trust for conversion and investment of personalty, ante, p. 54 ;*] and also shall and do stand possessed of and interested in the said residue of my personal estate and effects, and the stocks, funds, and securities in or upon which the same, or any part thereof, shall or may from time to time be laid out or invested, in trust to pay the interest, dividends, and annual produce of the said trust-moneys to my said wife, for and during the term of her life, (if she shall so long continue my widow ;) and from and after her decease, or from and after her marrying again, (in case she shall marry again,) as the case may be, upon trust to pay, transfer, and assign one moiety or equal half-part of such trust-moneys, stocks, funds, and securities, and the future interest, dividends, and annual produce thereof, unto my said daughter, E. B., her executors, administrators, and assigns, to and for her and their own use and benefit, and upon trust to pay the interest, dividends, and annual produce of the other moiety of the trust-moneys, stocks, funds, and securities, to and for the maintenance, support, and education of my grandsons, W. C. and T. C., sons of my late daughter, S. C., by her husband ;

And after her decease, or marrying again, to his daughter, E. B.

Bequest to his daughter, E. B., of L.

The residue of his estate and effects to his trustees, upon trust to sell.

In trust for his wife for her life, if she continues his widow. And after her decease, or marrying again, in trust, as to one moiety, for his daughter, E. B.

And the other moiety for his grandsons.

\* A condition that a widow shall not marry is lawful, (see *Ambl. 209 ; 2 Vern. ; and Scott v. Tyler, 2 Bro. Ch. Ca. 431 ; Richards v. Baker, 2 Atk. 321.*)

band, T. C., until my said grandsons shall attain their respective ages of twenty-one years. And when and so soon as my said grandson, W. C., shall attain the age of twenty-one years, then upon trust to pay, transfer, and assign all such last-mentioned moiety of the said trust-moneys, and the stocks, funds, and securities in or upon which the same shall be invested, (except the sum of L. )

unto my said grandson, W. C., his executors, administrators, and assigns, to and for his and their own use and benefit. And upon trust, when and so soon as my said grandson, T. C., shall attain his age of twenty-one years, to pay and transfer the said sum of L. and the stocks, funds, and securities in or

upon which the same may be invested, unto my said grandson, T. C., his executors, administrators, and assigns, for his and their own use and benefit. Provided always, and my will is, that in case either or both of my said grandsons shall depart this life before he or they respectively attain the age of twenty-one years, then that the share of such one, or both of them, so dying under such age, as the case may be, of and in the said moiety of the said trust-moneys, stocks, funds, and securities, shall thereupon go and be paid and transferred to my said daughter, E. B., her executors, administrators, and assigns, to and for her and their own use and benefit. And I appoint my said wife, E. B., and my said daughter, E. B., executrixes of this my last will and testament, I revoke all other wills by me at any time heretofore made. [*Insert here, if required, the usual power for varying securities, see ante, p. 61, for enabling executors to compound debts, p. 71, for giving validity to their receipts, p. 58, for the indemnity of trustees and executors, p. 77, and for the appointment of new trustees, p. 70.*] In witness, &c.

Proviso in case of the death of grandsons before twenty-one, then to transfer to his daughter.

*Will of Real and Personal Property, with Devises and Bequests to Wife, Son, and Daughters.*

This is the last will of me, A. B., of, &c., in the

county of, &c., made                      day of, &c. I give and devise my messuage, tenement, or dwelling-house, with the buildings, gardens, lands, and hereditaments thereto belonging, situate, lying, and being within the parish of, &c., aforesaid, now in my possession and occupation, and which I lately purchased of and from, &c., unto and to the use of my wife, S. B., and her assigns, for and during the term of her natural life; and from and after her decease to the use of my only son, T. B., his heirs and assigns for ever. I give unto my said wife all the wines and other liquors and provisions that I shall be possessed of at the time of my decease, and also my wearing apparel; and I give unto her all my household goods, furniture, plate, linen, and china, and the use and enjoyment thereof for her life;\* and I give to my said wife the sum of L.                      , to be paid to her within one calendar month next after my decease. I give and bequeath unto [*trustees,*] their executors, administrators, and assigns, the sum of L.                      , part of my stock or capital in the government or parliamentary funds, commonly called the                      per cent. annuities, the same to be transferred to and invested in their names as soon as conveniently may be after my decease, upon trust to pay to, or otherwise permit and suffer my said wife, S. B., and her assigns, to receive and take the dividends and yearly produce of the said L.                      per cent. annuities, during her natural life, to and for her and their proper use and benefit; and from and after her decease, upon the trusts hereinafter mentioned. I give and bequeath unto the said [*trustees,*] their

The testator devises a house to his wife, for life.

With the remainder to his son in fee.

Wines, liquors, provisions, and apparel for wife. Goods to her for life.

And a sum of L.                      , payable one month after his decease, L.                      to trustees to invest.

Upon trusts thereafter mentioned.

\* Here may be added, if thought necessary, "and request Inventory. that an inventory shall be made of such household goods, plate, linen, and china, immediately after my decease, &c.; and that my said wife shall sign such inventory, accompanied with an undertaking for the delivery thereof by her representatives, upon or immediately after her decease, to the persons or person who shall be entitled to the same under my will." (See note to p. 700, and see 3 P. Wms. 335.)

executors, administrators, and assigns, the sum of L. , part of my stock in the three per cent. consolidated bank annuities, the same to be transferred to and vested in their names as soon as conveniently may be after my decease. And I do hereby declare and direct, that the said [*trustees*,] their executors, administrators, and assigns, shall, from and after the decease of my said wife, stand and be possessed of and interested in the said L.

I. three per cent. annuities.

Declaration of the trusts.

In trust for three daughters, with survivorship, at their ages of twenty-one years, or marriage, if with consent.

per cent. annuities, and shall, from and after my own decease, stand and be interested in the said L. three per cent. consolidated bank annuities, upon the trusts following; (that is to say,) in trust for my three daughters, S. B., E. B., and C. B., in equal shares, the share, or respective shares, of such of them as shall be under the age of twenty-one years, and unmarried at the time of my decease, to be vested in and transferable to her or them, as and when she or they shall attain that age, or marry, which shall first happen, so as such marriage be had with the consent and approbation of my said wife, if living; <sup>xx</sup> and the share, or respective shares, of such of them as shall attain the age of twenty-one years, or be married, in my lifetime, to be vested in her or them at my decease, and be transferred as soon thereafter as conveniently may be. And I direct, that if any one or more of my said three daughters shall die under the age of twenty-one years, and unmarried, or shall marry without such consent as aforesaid, and afterwards die under that age, then, as well the original portion or portions hereinbefore provided for each such daughter so dying, as every other portion or share, which she or they shall, by virtue of this my will, have taken by way of survivorship, or accrue, of and in the said L.

If without consent, to others.

<sup>xx</sup> A condition to marry, or not to marry without consent, &c., or not to marry a particular person, or not to marry an individual of a certain nation, is good, (9 East R. 170, 2 Bro. Ch. Ca. 431.) *Stackpole v. Beaumont*, 3 Ves. 89; *Clifford v. Beaumont*, 4 Russ. 325, *ante*, 700.

per cent. annuities, and L. three per cent. consolidated bank annuities, shall, from time to time, accrue and belong, and be in trust for the others or other of them, and also for my said son, T. B., in equal shares, and shall be vested in and payable or transferable to my said daughters as and when their original portion or portions shall respectively become vested and payable, as aforesaid; and the same shall not be vested in or transferable to my said son, unless and until he shall attain the age of twenty-one years. And if all my said three daughters, S. B., E. B., and C. B., shall die under the age of twenty-one years, and unmarried, or shall marry without such consent as aforesaid, and afterwards die under that age, then and in that case the whole of the said L. per cent.

If all die under age, and unmarried, for wife and son.

annuities, and L. three per cent. consolidated bank annuities, shall be in trust for my said son, T. B., his executors, administrators, and assigns; but if my said son shall happen to die under the age of twenty-one years, and unmarried, and without issue living at his decease, or born in due time afterwards, then upon trust that the said [*trustees*,] their executors, administrators, and assigns, do and shall pay to, or otherwise authorize or permit and suffer my said wife, S. B., and her assigns, to receive and take the dividends and yearly produce of the said L. three per cent. consolidated bank annuities during her natural life, to and for her and their own proper use and benefit. And I declare and direct, that, from and after the decease of my said wife, the said L. three per cent. consolidated bank annuities, and also the said L. per cent. annuities, shall be in trust for my brothers and sister, J. W. B., of, &c., R. B., of, &c., and M. B., of, &c., equally, share and share alike. And I declare and direct, that, from and after my decease, the dividends and annual produce of the respective shares of my said three daughters of and in the said L. three

After death of wife, in trust for relations.

Interest to applied by wife for maintenance of children;

and after her  
decease, by  
trustees.

per cent. consolidated bank annuities, or a proportionate and sufficient part thereof, shall be applied to and for her or their respective maintenance, education, or benefit, until the same shares shall become vested and payable, the same to be paid to my said wife as long as she shall continue my widow, to be by her applied to that purpose, but for which she shall not be obliged to keep nor give any account.\* And after her decease, or second marriage, which shall first happen, the same shall be applied for that purpose, either immediately by the said [*trustees*,] their executors, or administrators, or at their election, be paid to any person or persons by them from time to time appointed to receive and apply the same for that purpose; and the accounts of such persons relating to the expenditure and application of the same dividends and yearly produce shall be settled by the said [*trustees*.] And from and after the decease of my said wife, the interest and yearly produce of the respective shares of my said daughters of and in the said L.

per cent. annuities, until the same shares shall become payable, or a sufficient part thereof, shall be applied to and for her or their respective maintenance, education, or benefit; and that the residue or surplus of the dividends and yearly produce of the respective shares of my said daughters of and in the said L., &c., and the said L., &c., which shall remain after, and shall not be paid and applied in manner and for the purposes aforesaid, shall be added to, and accumulate with such respective shares, and go as the same are hereinbefore given and disposed of. And I do hereby declare and direct, that if, at the time of my decease, I shall not be possessed of the stock or sums of L. per cent. annuities, and L. three per cent. consolidated bank annuities, or either of the same stocks or sums, so as not to completely answer and satisfy the before-

If not possessed of stocks at testator's decease, trustees to purchase.

\* From the recent case of *Hadow v. Hadow*, 9 Sim. 438, it would appear that this direction would be implied.

mentioned bequests, that then, and in that case, and as soon as conveniently may be after my decease, such sum or sums of money, out of my personal estate, shall be laid out in the purchase of per cent. annuities, and three per cent. consolidated bank annuities, in the name of my said trustees, as, together with the stocks or sums of money (if any) then standing in my name, of the above nature and description, shall and will make up the full sum or capital of L. in the stock or fund called the

per cent. annuities, and the full sum or capital of L. in the stock or fund called the

three per cent. consolidated bank annuities; it being my express will and intention that there shall be no ademption of the said legacies or bequests of L. annuities, and L.

So as no ademption shall take place.\*

three per cent. consolidated bank annuities, or either of them, by reason of the sale or other disposition by me of any part of my stocks or moneys in the same funds, at any time or times before my decease.

And as to my ready money, securities for money, stock, or money in the public funds, and all other my personal estate and effects whatsoever and wheresoever, not hereinbefore given and disposed of,

And all other personal estate.

I give and bequeath the same unto the said [*trustees*,] their executors, administrators, and assigns, upon the trusts following; (that is to say,) in trust thereout to satisfy and pay all my debts, legacies, funeral and testamentary expenses, and from and after payment thereof upon trust, &c. I constitute and appoint my said wife guardian of all my said children,

Upon trust to pay legacies, &c.

until they shall attain their respective ages of twenty-one years. And I nominate and appoint the said [*trustees*] executors of this my last will and testament. And I do hereby, &c. [*add the usual indemnity and receipt clauses, see pp. 77, 58.*] And, lastly, I do hereby revoke all former wills by me at any time heretofore made, and publish and declare

Ultimately for two brothers.

\* As to ademption of legacies, see p. 694.



this only to be my last will and testament. In witness, &c.

*Short Form of Will of Real and Personal Estate directed to be converted into money.*

This is the last will and testament of me, A. B., of [appointment of executors, p. 692, directions as to payments of debts, p. 692, bequest of legacies and specific devises, p. 693.]

I give, devise, and bequeath, unto the said all and singular the rest, residue, and remainder, of my real and personal estate, of what nature or kind soever not hereinbefore disposed of, whether in possession, reversion, or remainder, and over which I have any power of disposition or appointment, with their several rights, members, and appurtenances, to hold the same real and personal estate and premises respectively, unto and to the use of the said their heirs, executors, administrators, and assigns respectively, according to the several and respective natures and tenures thereof; but upon and for the trusts, intents, and purposes following; (that is to say,) as to the freehold, leasehold, and copyhold parts thereof, upon trust, [see trusts for sale, p. 54,] and as to the rest and residue thereof, upon trust, [see trust for conversion of personal estate, p. 54.] And I do hereby declare and direct, that the trustees or trustee, for the time being, of this my will, shall and do stand possessed of, and interested in, the moneys to arise from such sales, calling in, and conversion of my said residuary, real, and personal estate, as hereinbefore directed, Upon trust that they, the said trustees or trustee, for the time being, of this my will, shall and do lay out and invest the same, [see trust for investment, p. 54.] And I do hereby will and direct, that the said [trustees,] or other the trustees or trustee, for the time being, of this my will, shall stand possessed of, and interested in, the said trust moneys, and the stocks, funds, and securities wherein, or upon which the same may from time

to time be invested, and the interest, dividends, and annual produce thereof, upon, and for the trusts, intents, and purposes, hereinafter mentioned; (that is to say,) upon trust, [*for the different trusts, see pp. 54, 632, and 644. If any of the trusts should be for children under age, it is usual to insert powers of advancement and maintenance, see pp. 62 and 634.*] [*Add power for trustees to give receipts, p. 57, and to vary securities, p. 61, to compound debts, p. 71, devise of trust and mortgage estates, p. 695, powers to appoint new trustees, p. 70, and the indemnity clause.*] And, lastly, I do hereby revoke all former and other wills by me at any time heretofore made, and I publish and declare this only to be my last will and testament. In witness, &c.

### *Codicil to a Will.*

Whereas I, A. B., of, &c., have made and duly executed my last will and testament in writing, bearing date, &c., now I do hereby declare this present writing to be a codicil to my said will, and I direct the same to be annexed thereto, and taken as part thereof. I do hereby give and bequeath [*state any fresh bequests.*] And whereas I have by my said will given and bequeathed unto, &c., [*stating the legacy given by the will ;*] now I do hereby revoke the said legacy so given to the said, &c., and I give to the said, &c., the sum of, &c., only ; [*and so on, setting forth the fresh legacies, and revoking other bequests in the will, as the testator may deem proper.*] And I do hereby ratify and confirm my said will in every respect, except where the same is hereby revoked and altered as aforesaid. In witness whereof, I, the said A. B., have to this codicil set my hand and seal this, &c.

Reference to the will.

Recital of the bequests in the will.  
Revocation of the bequest.

Confirmation of will.

### \* OBSERVATIONS ON WILLS.

The recent statute for the amendment of the laws with respect to wills, an abstract of which is given

in a previous page,\* has removed all distinctions between wills of real and personal estate, and has appointed one uniform mode of execution of every testamentary disposition, whether operating as a will at common law, or as an appointment in execution of a power, and that without regard to any particular mode of execution which the power may require; and now every will or codicil—certain wills of soldiers and mariners in actual service only excepted—must be signed at the foot or end thereof, either by the testator, or some other person in his presence, and by his direction; and such signature must be made or acknowledged by the testator in the presence of two or more witnesses, present at the same time, who must subscribe the will in the presence of the testator.

No particular form of attestation is required by the act, but it will still be advisable to adhere to those forms which were formerly used, in which the compliance with the requisitions of the statute is stated. It will be observed, that neither publication nor sealing are now necessary.

By the 14th section of the act, it is provided, that a will shall not be invalid on the ground of any incompetency in the attesting witnesses to prove its execution. Executors-creditors, even if the will contains a charge for the payment of their debts, and legatees, are made competent witnesses to a will; but all legacies, devises, or appointments to attesting witnesses, their husbands or wives, are declared to be void so far as respects them, or any person claiming through them, and this rule would apply even though there were two other competent witnesses.

It would not be judicious for a legatee under a will to attest a codicil to it; but it is apprehended that if the codicil did not affect his legacy, his right to it would not be forfeited, and there is room to contend, that even if the legacy under the will were

\* P. 180.

increased by a codicil attested by the legatee, he would be deprived only of the increased benefit intended for him by such codicil. If, however, the codicil revoked the legacy given by the will, and substituted another in its stead, the legatee would lose all benefit under both the will and codicil ; for though he could not take that given him by the codicil which he attested, such codicil would, notwithstanding, be a valid revocation of the previous gift. If the effect of a codicil should be to increase the amount of the residue, by revoking or diminishing any legacies given by the will, a legatee of such residue would, it would appear, by attesting such codicil, be precluded from claiming any benefit which might otherwise accrue to him under its provisions. Indeed, in so many ways might the rights of a legatee, under a will, be affected by the provisions of a codicil, that it may be laid down as a universal rule, that no one at all interested under a will or codicil should attest any subsequent testamentary document.

The power of disposing of real estates by will has never yet been intrusted by the law of this country to infants ; but formerly females of twelve, and males of fourteen years of age, could make valid wills of their personal property. That power has been taken away by the recent wills act ; and real and personal estate are put on the same footing by the 7th section of the act, which has declared that no will made by any person under the age of twenty-one shall be valid.

The above mentioned act has, on the other hand, assimilated the law applicable to dispositions by will of real estate to that of personalty, in a very important point, by dispensing with the necessity of those words of limitation in the devise of estates of inheritance, which would be essential in a deed, and by declaring that a simple devise, without any words of limitation, shall be construed to pass the fee-simple, or other the whole estate or interest which the

testator had power to dispose of by will, unless a contrary intention shall appear by such will.

This enactment, though most beneficial as having a tendency to prevent many questions which formerly arose on the construction of wills, is not intended to supersede the use of that language which is appropriate to limitations by deed; and a good draftsman will make it as much his care as ever to remove all doubt as to the intention of a testator, by the use of that language which he would use in settling property by deed.

A testamentary appointment, executed since 1837, will be invalid if not executed according to the directions of the act of 1st Victoria; and it is quite immaterial whether the requisitions which the power may contain in that respect are complied with or not, the validity of appointments by will being now perfectly independent of such requisitions.

A will formerly operated only on such real estate as the testator had at the time of its execution; but as the 24th section of the 1st Victoria has enacted, that every will shall take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will, real estates purchased after the date of the will would now belong to the residuary devisee, and not to the heir-at-law, if the language of the devise were sufficiently extensive to comprise them.

The operation of a will is also considerably extended by the 26th and 27th sections of the act under which copyhold and leasehold estates, and any real estate over which the testator has only a general power of appointment, will now pass under a general devise, or a devise of land under a description sufficiently comprehensive to include it.

An alteration in a will, whether by addition or obliteration, will be inoperative, except so far as the words or effect of the will shall not be apparent, unless executed as the will itself; and this may be done either near to the alteration, or at the foot or end

of, or opposite to, a memorandum written on some part of the will-referring to such alteration.

A will, when once revoked, can now only be revived by re-execution, or a codicil showing an intention to revive it; but a revival of a will operates only as a reversal of the act of revocation, and therefore only restores it to the state in which it was at the time of the revocation, unless an intention to the contrary shall be shown; and, consequently, if a legacy originally given by a revoked will had been previously revoked by a distinct act, a revival of the will would not of itself revive such legacy.<sup>7</sup>

Marriage, either of a man or woman, is, *ipso facto*, a revocation of any will previously made, unless it should be an appointment of real or personal estate, which would not, in default of such appointment by the testator, pass to his representatives; but no will or codicil shall be otherwise revoked, except by another will or codicil, or some writing executed as a will, "or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence, and by his direction, with the intention of revoking the same."

A legacy even of a debt to the debtor lapses by the death of the legatee in the testator's lifetime, even though the legacy should be given to the legatee, his executors, administrators, and assigns; and such rule equally applies to a devise of real estate, though words of limitation are added.\* But if a testator desires to benefit the legatee, even though he should die in his own lifetime, he may carry out his intention by expressly substituting his issue, representatives, &c., and directing, that, in the event of the principal legatee dying in his lifetime, such

<sup>7</sup> Elliot v. Davenport, 1 P. Wms. 83; Shuttleworth v. Greaves, 4 M. and Cr. 35.

\* Goodright v. Wright, 1 P. Wms. 397.

substituted legatee or devisee shall be entitled to the benefit intended for him.\*

An exception to the rule, with reference to the lapse of legacies, has been introduced by the recent act, in favour of the issue of the testator; and now, in cases where an interest in real or personal estate is given to any issue of the testator, such interest, if not determinable with the life of the legatee or devisee, shall not lapse by his death in the testator's lifetime, if such legatee shall leave any issue living at the testator's decease; in which case, such devise or bequest shall take effect as if the legatee had died immediately after the testator, unless a contrary intention shall appear by the will.

A similar exception has been made in favour of devisees in tail, whose devises shall not fail, by their death, in the testator's lifetime, if they leave issue inheritable under the entail, living at the testator's decease, unless a contrary intention shall appear by the will.

When the payment of a legacy is to be postponed till some definite period after the testator's decease, great care should be taken to express clearly whether it is his intention that the legacy should be vested from the time of his decease, or that the right to it should depend upon the circumstance of the legatee being alive at the period mentioned for payment. An express declaration that the legacy shall be a vested interest, notwithstanding the postponement of payment, or that the title of the legatee shall depend upon his attaining the particular age, or being alive at the particular period, according to the wishes of the testator, is the safest course to adopt, and will prevent any questions on the subject.

Where there is no direct gift to the legatee, but a direction for payment at a particular period, as, for instance, the death of a tenant for life, the attainment by

\* Elliot v. Davenport, 1 P. Wms. 83; Vaux v. Henderson, 1 J. and W. 388.

the legatee of a particular age, or the period when the youngest of a class of legatees shall attain a certain age, such a direction has been considered a sufficient indication of the intention of the testator, that the legatee's title is to depend upon his living to such period; and, consequently, in such cases his representatives would not be entitled, if he should die before attaining such period.<sup>b</sup>

Where the testator attaches words of condition to a gift of a legacy, of which the payment is postponed, the legatee has not a vested interest till the arrival of such period. It is sometimes difficult to ascertain whether the language used by a testator indicates an intention to make the legacy conditional, or simply to postpone the payment. The leaning of the courts, however, is in favour of vesting; and they will, as far as the intention of the testator is not opposed to such a construction, so construe a will as to give vested interests as early as possible. The following words have been considered words of condition, indicating an intention to suspend the vesting, as well as the payment, "*provided he attains*," or "*if he attains*," some particular age, "*at such time as the sale should be completed, in case they should be then living*." Such language ought never, therefore, to be used, unless it is intended to benefit the legatee, only on such an event.

A few only of the most important alterations recently made in the law of wills have been noticed above; and the reader's attention is therefore directed to a fuller statement of the recent act given in a preceding page previously referred to.

A copy of a paper, which was extensively circulated by government at the time the recent wills act passed, is given below, as containing a concise reference to some of the principal alterations effected by that act.

<sup>b</sup> Batsford v. Kebell, 3 Ves. 363; Sansbury v. Read, 12 Ves. 75; Watson v. Hayes, 9 L. J. N. S. Ch. 49.

<sup>c</sup> Elwin v. Elwin, 8 Ves. 546.



*The principal Regulations contained in the Act (1st Victoria, c. 26) for Amending the Laws with respect to Wills, which took effect on the 1st day of January 1838.*

No will made by any person under the age of twenty-one years will be valid.—Sect. 7.

The new statute does not alter the law as to the wills of married women.—Sect. 8.

The Regulations to be observed in making a will or codicil are as follows:—

1. The will or codicil must be signed at the foot or end thereof by the testator.
2. If he does not sign, it must be signed by some other person in his presence, and by his direction.
3. The signature must be made or acknowledged by the testator, in the presence of two or more witnesses present at the same time.
4. The witnesses must attest and subscribe the will or codicil in the presence of the testator.—Sect. 9.

Appointments by will, under a power, are made subject to the above mentioned regulations.—Sect. 10.

The testator's marriage is a revocation of this will, (excepting in certain cases of exercise of powers.)—Sect. 18.

The revocation of a will or codicil may be by any one of the following means:—

1. By a will or codicil executed in the manner above mentioned.
2. By a writing declaring the intent to revoke, and executed as a will.
3. By burning, tearing, or destroying of the will by the testator, with intent to revoke, or by some person in his presence, and by his direction.—Sect. 20.

Alterations made in wills must be executed in like manner as wills.

*N.B.*—The signature of the testator, and subscription of witnesses, may be made in the margin, or opposite, or near to, the alteration, or at the end of a memorandum, on the will, referring to the alteration.—Sect. 21.

Residuary devises in wills will include (unless a contrary intention appear in the will) estates comprised in lapsed or void devises.—Sect. 25.



# INDEX.

- Abstracts of Title*—observations on the preparation of, 117, 118, 120. Should be prepared before a sale, 117. The commencement of, 118. Description of premises in, 120. Of a will, 121. Of an administration, *ib.* Act of parliament, *ib.* Exchange, *ib.* Award, *ib.* Decree, 122. Attorney's duty, as to perusal of, *ib.* On taking counsel's opinion on, *ib.* Attorney stating the effect, and not the language of an instrument in abstract, is responsible, *ib.* Stating contingent remainders, 126 *n.* *Forms*, of abstract of lease and release, 123. Settlement, 124. Will, 125. Codicil, 128. Court rolls, *ib.*
- Accounts*—agents are bound to account immediately for money received, 131 *n.* Agent bound by receipts stated in accounts, 133. Right to appropriate payments to any particular account, *ib.* On opening accounts between attorney and client, 134. *Forms*, of undertaking to keep and render accounts, 131. Allowance of account, 132.
- Acknowledgment of Deeds by Married Women*—abstract of statute relating to, 164. *Forms*, and notes on, 186.
- Actions*—attorney should obtain a written authority to commence or defend an action, 135. Act for limitation of, 169. *Forms*, of retainer to sue, 135. To defend, *ib.* Demand of warrant from a gaoler, 137. A constable, *ib.* Notice of, against a justice, 517. Excise-officer, 518. See *Attorney*.
- Administrator*—time runs against, from intestate's death, 171. Of attorney not liable to costs of taxation, 304. Not protector of a settlement, 594.
- Adowson*—right to recover, how barred, 174. Devise of, 185.
- Affidavit*—voluntary affidavits prohibited, 671. Statutory declarations substituted in lieu thereof, *ib.* *Forms*, in justification of bail, 329. Of the execution of power of attorney, 578, 586. Of debt to be annexed to ditto, 579. Of the execution of a cognovit, 333 *n.* Of articles of clerkship, 298.
- Agents*—see *Accounts*. Duty, as to principal's money in his hands, 132. Of attorney, right of lien of, 302. Attorney and agent, 300.
- Agreements*—by protector for withholding consent, void, 157. Observations on agreements for purchase, 202. For leases, 215. On specific performance of, for purchase of choses in action, 289. Difference between those under and not under seal, 195 *n.* Signature of, by agent, 200. Bind executors, though not named, 196 *n.* As to costs between attorney and client, 304. In restraint of

- trade, 549 *n.* *Forms*, for an exchange, 190. For the purchase of a freehold estate, 193. Of a copyhold, 195. Leaseholds, 196. Ditto, with a stipulation as to fixtures, 198. Of variations in purchase agreements, 200. For the lease of a house, 206. For lodgings, 209. For purchasing at a valuation, 201. For letting a farm, 209. For letting premises for a short term, 211. For lease of a house, under conditions of sale, 214. For building a house, 217. *Forms* for letting a field for building, 218. Between a master and clerk, 220. A master and servant, 222. To procure the execution of deeds, 223. To execute assignment of leaseholds as a collateral security, 224. To bear equal shares in a law suit, 225. For compromising a law suit, and relinquishing a claim to estates, 226. For reference, 227. Of a chancery suit, 228. For a lease, 421. Between a tradesman and clerk, for the latter to conduct the trade, 546. Between a trader and retiring partner, for purchase of house and stock in trade, 548. In a settlement for barring of dower, 639. Between landlord and tenant, as to distress, 399.
- Alienation*—observations on restraint upon, 648. Form of limitation over upon, 643, 696.
- Annuity*—may be made determinable on bankruptcy, 696. Stamps on grants, and assignments of, 654. *Forms*, of bequest of annuity, 695. Proviso for determination of, 696. Of covenant to pay, in a settlement, 637. Of condition, in an annuity bond, 322.
- Answers in Chancery*—observations on instructions for, 230. Mode of taking, 232. Form of oath to, *ib.* Conclusion of, 233.
- Appointments*—attestation of, 4. Operative words in, 38. Execution of, by will, 182, 712. General devise operates as an appointment by will, 184, 712. When testamentary appointments revoked by marriage, 183, 713. *Forms*, of by feme covert, of stock, 234. Of a guardian, by infant, 236, 237. Ditto, by a father, 238. Of a chaplain, *ib.* Of a parish clerk, 239. Of a gamekeeper, 240. Of receiver, by a mortgagor, 241. With release, 356. By way of mortgage, 449. Of further charge, 455. By will, 699.
- Apportionment*—of rents and stated payments, 141, 431.
- Appraisement*—*forms*, on a distress, 400. Appraiser's oath, 399.
- Apprenticeship*—observations on, 250, 248 *n.* Stamps on, 654. *Forms*, of indenture of apprenticeship, 245, 247. Assignment of, 249.
- Arrest*—act for its abolition on mesne process, 145. Defendant about to abscond may be arrested, *ib.* Unrealized securities to be relinquished on, 148.
- Articled Clerk*—a graduate of one of the universities need serve only three years, 299. May serve last year with a barrister, or special pleader, or his master's agent, *ib.* Suggestions on the proper age to be articulated, *ib. n.* Are not apprentices, 300. *Forms*, of articles of clerkship, 293. Assignment of do., 296. Of affidavit of execution of, 298.
- Assignee*—of a lease must indemnify assignor against the rent and co-

venants, 15. Except assignees of bankrupts, *ib.* Of insolvent, estate vests by the appointment, 149. Of attorney not liable to costs of taxation, 304. Of mortgage, precautions to be taken by, 463. Not entitled to be protector of a settlement, 155, 596. Exception to the rule, 156, 593. Form of conveyance by assignees of bankrupt, 381.

*Assignment*—of terms, observations on, 257. Of apprentices, observations on, 251. Of leaseholds, 16, 262. Of choses in action, 284. Of mortgages, 463. Operates as a surrender, when, 675. Defective surrender may operate as, *ib.* Operative words in, 38. *Forms*, of recital of assignment of a term, 24, 28. Of goods, 27. Of mortgage, 31. Diverse assignments, 32. Of apprentice, 249. Of attendant terms, 253. By indorsement, 255. Of several terms, *ib.* Of leaseholds, 260. Of a debt, 262. Of a bond, 266, 271. And warrant of attorney, 268. Of a judgment, 269. Of dividends in bankruptcy, 272. Ditto, to an attorney to secure costs, 273. Of stock bequeathed by will, 276. Of a legacy, 280. Of a covenant, 281. Of insurance on a life, 282. Against fire, 283. Of articles of clerkship, 296. Of a mortgage, 439. Where a further advance is made, *ib.* When mortgage for a term changed into a mortgage in fee, 441.

*Attestation*—importance of, 4. Observations on solicitors attesting deeds, 5. Of a will, 710, 182. Gifts to attesting witness of, are void, 182, 710. Ditto, as to their wives or husbands, *ib.* Of warrants of attorney, 686. *Forms*, of a will, 115, 699. Of a deed, 115. Of a warrant of attorney, 681. Of a bill of sale, 317.

*Attorney*—observations on their attestation of deeds, 5. Must attest warrants of attorney, 146, 686. Duty before a sale of real property, 117. As to preparation of abstract to lay before counsel, 122. As to money of others in his custody, 132. As to taking a written authority to commence or defend an action, 135, 136. His right as to withdrawing from the conduct of a suit or defence, 136. Effect on their right of lien by doing so, 302. Cannot take security for future costs, 273 *n.* How far bound by acts of their agents, 300. Lien for their costs, observations on, *ib.* Admitted in one court may practise in others, 304. Taxation of their bills, *ib.* Costs of chargeable only against the attorney personally, *ib.* What professional communications they may not disclose, 307. *Forms*, of undertaking to pay his bill, 138. Articles of partnership between, 550. Retainer of, to sue or defend, 135. See *Articled Clerk*; *Powers of Attorney*; *Warrants of Attorney*; *Actions*.

*Attornment*—forms of, 291.

*Awards*—submission to, not revocable when made a rule of court, 338. Death of either party, determines arbitrator's power, *ib.* Observations on, 314, 327. *Forms*, of condition of arbitration bond, 324. As to appointment of arbitrator, 325. As to appointment of umpire,

325, 326. As to enlargement of time, 326. By arbitrator, 311. By umpire, 313. Of agreement to refer, 227.

*Bail*—mode of taking, 329. Plaintiff may sue them, 288. *Forms*, of bail bond, 328. Affidavits of justification of, 329, 330.

*Bankruptcy*—trader not paying or securing a debt after filing affidavit of debt, is guilty of an act of bankruptcy, 146. Of lessee, effect of, 431. Of a partner, is dissolution of partnership, 572. Effect of, on judgments, 688, 690. *Forms*, of provision against, in a settlement, 647. In a will, 696. Of gift over upon, 643. Of protest of bills in cases of, 491, 493.

*Bankrupts*—dealings with, 142. Conveyance by, and purchases from, before issue of fiat, 169. Suggestions as to settlements, on marriage of persons liable to become, 647.

*Bargain and Sale*—stamps on, 655. Operative words in, 38. Consideration essential to, 2. *Forms*, of lease for a year, 352. Of reference to in a release, 38. Enrolled, 364.

*Base Fee*—definition of, in fines and recoveries act, 151. How converted into a fee-simple, 154. Shall not merge, if arisen from an estate tail, 157, 676. In other cases will merge, 677.

*Bill of Exchange*—forms of protest of, 490-494. May be taken in execution, 147.

*Bill of Sale*—possession of goods should in general accompany it, 317. *Forms*, of goods, 316. Of a ship, 504.

*Bonds*—may be taken in execution, 147. Observations on arbitration bonds, 327. Post-obit bonds, 323. *Forms*, of assignments of, 266, 268, 270. Money bonds, 318. To bankers, 320. Mortgage bond, 321. From purchaser of equity of redemption to indemnify mortgagor, *ib.* Annuity bond, 322. Post-obit, 323. Arbitration, 324. Bail, 328. Condition of a bottomry bond, 502. Respondentia, 503.

*Boundaries*—of church property, act for ascertaining, 142.

*Certificates*—*forms*, of road being in repair, 525 *n.* Of forms having been complied with, preparatory to the sale of parish property, 538. By magistrate, of execution of a power of attorney, 579 *n.* See *Notarial Forms*.

*Chaplain*—must be appointed by deed, 238. Form of appointment, *ib.*

*Charge*—purchasers of property subject to, must indemnify vendor, 15. On land, barred after 20 years, 174. Observations on further charge, 465.

*Charter-Party*—forms of, 494-498. Protest for breach of, 486. For not executing, 490.

*Chose in Action*—definition of, 284. Not assignable at law, 13, 285. Exception to rule, 288. May be assigned in equity, 13, 285. Liabilities of assignees of, 13, 286. Observations on assignments of, 284. Stamps on assignments of, 285. Suggestions to purcha-

- vers of, 286, 287. Of wife, husband's power over, 288. On specific performance of agreements for the purchase of, 289. Liable to be taken in execution, 147, 290. *Forms*, of assignment of, 262. Mortgage of, 454.
- Church*—act for ascertaining boundaries of church lands, 142. Form of grant of a seat in, 362. Observations on, 363 *n*.
- Churchwardens*—power over parish property, 528. Are a corporation, as to, *ib*.
- Clerk of a Parish*—on the right to appoint and remove, 239. Form of appointment of, *ib*.
- Cognovits*—must be attested by debtor's own attorney, 146, 332. Defeasance on should be written on same paper, 689. *Forms*, 332. Of affidavit of execution of, 333. See *Warrants of Attorney*.
- Common, Right of*—what length of user gives a title to, 177.
- Conditions of Sale*—*forms* of, 335. Of copyholds, 346. Leaseholds, 343. Timber, 349. For a lease, 421. Parish property, 539. See *Agreements*.
- Contingent Interests*—may be devised, 181. May be conveyed in equity, 362. Do not prevent a merger, 677. Will be destroyed by merger of particular estate, *ib*.
- Continual Claim*—rights are not preserved by, 172.
- Conveyance*—observations on, 389. Parties in, 10. Recitals in, 11, 16. Description of premises in, 13. Proper covenants in, 14. Costs of preparation and execution of, 205. Of perusal of, 605. Stamps on, 657. *Forms*, of lease and release, 352, 354. Appointment and release, 356. Feoffment, 358. Deed of gift, 360. Of furniture, *ib*. Of a reversion or remainder, 361. Of a pew, 362. Bargain and sale enrolled, 364. Exchange, 365. By mortgagor and mortgagee, 368. By trustees for sale, 369. By trustees and heir, 370. Tenant for life and remainder-man, 371. Remainder-man to tenant for life, 372. From husband and wife, 373. With mortgage, 374. From devisee, annuitant, and legatee, 377. By tenant for life to reversioner, 380. By assignees of a bankrupt, 381. To bar an entail, 384. Of equity of redemption, 382. Of copyholds, 386. Of leaseholds for lives, 388. Of parish property, 541; if copyhold, 544. Of real estate, on trusts for sale, preparatory to marriage, 640. See *Assignment*; *Release*; *Reconveyance*; and *Surrender*.
- Coparcener*—possession of one, not the possession of the other, 172.
- Copyholds*—may be devised, though testator not admitted, 181. Though no custom for doing so, *ib*. Extracts of wills of, are to be entered on the rolls, *ib*. Included in general devise, 184, 712. Purchaser of, must bear expense of surrender and admission, 196, 205. Observations on abstract of title to, 118. Observations on conveyance of, under bankruptcy, 381. Suggestions, as to the mortgage of, 459. On discharge of mortgage of, 607. *Forms*, of



abstract of title to, 128. Covenant to surrender, 386. Mortgage of, 434.

*Costs*—attorney cannot take security for future costs, 273. Observations on attorney's lien for, 300. Costs of admission to copyholds, on a purchase, 196, 205. Of taxation of bills, 304. Of demurrer to examination, falls on witness, if overruled, 305. Of making out a title, 203. Of examining abstract, 204. Of conveyance, 205. Assignment of terms, *ib.* Of attested copies, 206. Of perusing and taking an opinion on reconveyances, &c., 605. Occasioned by refusal to execute a reconveyance, *ib.* Of trustees, *ib.* 643. Form of security for, 273. Undertaking to pay, 138.

*Covenant to stand seised*—consideration of blood, or marriage, necessary, 3.

*Covenants*—to what a purchaser is entitled, 14. On sale for payment of debts or legacies, 15. In assignment of leases, *ib.* In conveyances of land subject to any charge, *ib.* In reconveyances, 604, 605. Of leaseholds, 605. Usual covenants in a lease, 404 *n.* On the covenant in a lease not to assign, 16, 406. To do anything under a penalty, 218. Construction of covenant to repair in a lease, 405. Proper covenants in a mortgage, 458. *Forms*, of assignment of benefit of a covenant, 281. Of commencements of, 84. To surrender copyholds, 386. To keep accounts, 221.

—*In Conveyances*—for title of freeholds, 85. Against incumbrances, 89. Of freeholds and leaseholds, *ib.* Of leaseholds, 94. By assignee to indemnify vendor from rents, &c., 96, 97. For production of title-deeds, 92. From purchaser of equity of redemption to indemnify mortgagor, 93. In assignment of a debt, 264, 267. To indemnify assignor of a debt, 265. That feme covert shall acknowledge a deed, 374. That parties, when of age, shall execute a deed, 378.

—*In Leases*—for payment of rent and taxes, 103, 408. To repair, *ib.* and 419. To paint, 104. To quit at expiration of term, 104, 408. Not to use offensive trades, 105, 410. To keep sheep on the premises, 105. To litter out cattle, *ib.* To repair fences, 106. Not to lop trees without permission, *ib.* Not to plough up pastures, 107. To take beer of landlord, *ib.* To serve notice on trespassers, and allow landlord to use tenant's name, 112. To permit lessor to enter to see repairs, 113, 409. To sow a quantity of acres before leaving, 114. To insure against fire, 108. To build a house, 110. To use lands properly, *ib.* To leave straw, 111. To lay down clover and grass, *ib.* To make summer fallows, &c., *ib.* Not to over-crop, *ib.* To sow clover, 112. To permit lessor to plough before tenancy expires, *ib.* By lessor for quiet enjoyment of premises, 108, 411. To contribute to party-walls, 109. That tenant may have a booby pasture, 419.

—*In Mortgages*—payment of principal and interest, 97. Premiums

- on insurance, 98. Of floating balance in mortgage to bankers, 102. For title in mortgage in fee, 98. For a term, 100. By appointment, 450. In assignment of mortgage that money is due, 441.
- In Release*—of debts for further assurance, 617.
- In Settlements*—for payment of an annual sum to trustees, 637. To settle after acquired personalty, 638.
- Creditors*—when deeds require a consideration to be valid against, 3. Rights on their debtors' real estates, 143, 144. Good witness to a will containing a charge in their favour, 182. Form of legacy to, 694. Act for extending their remedies against their debtors, 145. Loses benefit of securities on taking the person of his debtor, 148. Entitled to interest on their judgments, *ib.* Must register their judgments, 149.
- Crown*—may release lands of its debtors from extents, 169. Quietus to its debtors and accountants, to be registered, *ib.* Its judgments and extents must be registered, 168.
- Debts*—bequest of, subject to lapse, 693. Act for payment of, out of real estate, 143, 144. Form of release of, by will, 693. On judgment, carry interest, 148. Provision as to payment of, on dissolution of partnership, 567, 572. Acknowledgment to take it out of the statute of limitations must be in writing, 139. Of infants, *ib.* Form of affidavit of, 579. Insolvent's future property liable to, 691.
- Declaration*—see *Statutory Declaration*.
- Declaration of Trust*—see *Trust*.
- Decrees*—have the effect of judgments, 148. Must be registered, 149.
- Deeds*—definition of, 1. Essentials to, *ib.* Of infants, 1, 2. Married women, 2. Idiots and lunatics, *ib.* When consideration necessary, *ib.* Execution of, 3. By attorney, 3, 115. Reading of, before execution, 3. Takes effect from delivery of, 4. Date, *ib.* Attestation, 4, 115. Reasons why solicitors should not attest, 5. How avoided, 5, 6. How affected by fraud, 6. When void, *ib.* Different parts of, 6, 7. Operative words in, 37. Observations on the preparation of, 9. Parties, 10. Recitals, 11, 12. Description of parcels, 12. What property can be conveyed at law, 13. Observations on perusing, 14. As to the production of, on a sale, 204. Attorney's lien on, 303. Mortgagee should obtain possession of, 460. Schedule of, should be given on mortgage, 607. Right to attested copies of, 206. Right to possession, or covenant for production of, *ib.* Stamps on, 660. Form of covenant for production of, 92.
- Demurrage*—protest of, 483.
- Devise*—what may be devised, 181. To attesting witnesses, their wives or husbands, void, 182. Conveyance or other act, is

- only a revocation of *pro tanto*, 184. If general, operates as an appointment, *ib.* Of residue includes lapsed and void devises, when, *ib.* If general, includes copyholds and leaseholds, 184, 712. Passes a fee without words of limitation, 184, 711. "Die without issue," meaning of, in a devise, 184. To trustees, effect of, 185. Of estates tail do not always lapse, 185, 714. To issue of testator do not always lapse, 185. Revoked by marriage, 183, 713. What are words of condition in, 715. Forms of, of trust and mortgage estates, 695. In trust to sell, 697. In fee, 698. To an infant, *ib.* Of real estate for life, 699. See *Will*.
- Devisee*—must covenant against acts of his devisor, 14.
- Disability*—persons under, allowed ten years from its determination to assert their rights, 172.
- Distress for Rent*—forms applicable to, 398. Observations on, 401.
- Dower*—seisin of husband, not necessary for title to, 150. Lands may be conveyed or devised free from dower, *ib.* Devise of any real estate to widow, will bar her dower, *ib.* Women married before 1834, not affected by the dower act, *ib.* Arrears of, barred after six years, 175. Observations on conveyances with reference to, 389. Estate in, does not confer right to protectorship, 155, 594. Statute for the amendment of the law of, 150. Provisions for passing dower, 164. Forms relating to, 186.
- Ejectment*—form of warrant of attorney in, 684.
- Equitable Estates*—will not merge in an estate in remainder, 676. Will merge in the legal estate, 678.
- Equity of Redemption*—observations on, 382 *n.* Foreclosure of, 464. Reference of foreclosure suit, 462. Purchaser of, must indemnify vendor against the mortgage, 15. Purchaser of, should give notice to mortgagee, 382. Barred after 20 years, 173, 464. Form of conveyance of, 382. Covenant by purchaser to indemnify vendor, 93.
- Estate Tail*—devise of, will not lapse when, 185, 714. Will not merge, 676. Form of deed for barring, 384. Suggestions on the settlement of, 657. Act for abolition of fines and recoveries, 151. See *Protectorate ; Tenant in Tail*.
- Estates pur autre vie*—are assets in the hands of heir or executor, 181. Where no special occupant, shall go to executor, *ib.* Will merge in an estate for life, 676.
- Exceptions*—in conveyances, 41. Forms, of timber, 42, 44. Game and fish, 43. Mines, *ib.* Liberty to plant, 42, 43. In a lease, 415.
- Exchange*—form of, 365. Of right of way, 615. Agreement for, 190. Stamps on, 660.
- Executor*—is a good witness to a will, 183. Is not protector of a settlement, 155. Entitled to estates *pur autre vie*, where no special occupant, 181. Devise to, 185. Bound by testator's cove-

nants, 196. *Forms*, of appointment of, 692. Of gift of legacy to, 695.

*Feme Covert*—protector with her husband of her estates, 155. Sole protector, where she has the separate use, 155, 158. Deeds of in general void, 2. May convey by deed acknowledged, 164. Power over her separate estate, 649. May be restrained from aliening her separate estate, *ib.* May execute wills under a power, 182. May act under power of attorney, 587. Mode of providing for, against husband's bankruptcy, 647. Entitled to the custody of her children when under seven, 166. Estate of, husband entitled to for joint lives, 648 *n.* On her husband's power over her choses in action, 288. *Forms*, as to acknowledgment of deeds by, 186. Of conveyance from, 373. Trust for separate use, 632. Of lease of lands of, 419. Of reddendum in a lease of her lands, 50.

*Feme Sole*—marriage of, is dissolution of partnership, 572.

*Feoffment*—operative words in, 38. Form of recital of, 32. Form of, 358. Must be completed by livery of seisin, 358. Modes of delivering seisin, 358. Stamps on, 660.

*Fines and Recoveries*—act for the abolition of, 150. Abolished, 152. If defective, rendered valid in certain cases, 153.

*Foreclosure*—suit for, observations on, 462. Reference of, under 7th Geo. II. 462. Unnecessary after a certain period, 464.

*Fraud*—time runs against the remedy from discovery of it, 173. Makes deeds void, 6. Releases obtained through, void, 626. See *Statute of Frauds*.

*Further Charge*—observations on, 465, 446. *Forms* of, 444, 455.

*Gamekeeper*—appointment of, 240.

*General Devise*—what it will comprise, 184, 712.

*General Words*—forms of, in conveyances, 40.

*Grant*—*forms*, of operative words in, 38. Of a reversion or remainder, 361. Of tithes, 361 *n.* Of a seat in a church, 362. Of a right of way, 615 *n.*

*Guardian*—observations on, 238 *n.* *Forms*, of appointments by infant, 236. By father, 238. By will, 692.

*Habendum*—object of, 7. *Forms* of, 45.

*Heir*—must covenant in a conveyance against the acts of his ancestor, 14. Not protector to a settlement, 155, 596. When also devisee shall take as such, 167. Estates *pur autre vie*, assets in hands of, when special occupant, 181. When bound by ancestor's contracts, 195.

*Identity*—of parcels in deeds, how preserved, 13. Notary's certificate of, as to persons, 467.

*Indenture*—definition of, 9, 10. A person not a party to, cannot take under, 588. Exception to the rule, *ib.*

- Infants*—deeds of are generally void, 1. Exceptions to the rule, *ib.* Contracts for annuities with, void, 2. May act under power of attorney, 587. Trustees may convey under the direction of the court of chancery, 606. Warrant of attorney by, is void, 691. Cannot make a will, 182, 711. If protector, court of chancery will act for them, 156, 595. A promise to pay a debt, contracted during infancy, must be in writing, 139. As to apprenticeship of, 250. Act for the custody of, 166. See *Guardian*; *Feme Covert*.
- Inheritance*—act for the amendment of the law of, 167. Half blood may inherit, *ib.* Attainder will not prevent descent, *ib.* See *Plate* at the commencement.
- Interesse termini*—will not prevent a merger, 677. Will not merge, 678. May be released, *ib.*
- Interest*—payable on judgments, 148. On purchase-money, where purchase set aside, 133. Arrears of, barred after six years, 175. Not chargeable on interest, or costs paid by assignee on transfer of mortgage, 463. Payment of, takes a case out of statute of limitations, 139. Converted into principal, is equivalent to a fresh loan, 668. Allowed on rent, taxes, &c. paid by mortgagee, 666.
- Inventory*—should be given by tenant for life of furniture, &c. 700, 703. Of goods distrained, form of, 398.
- Joint Tenants*—how named in deeds, 10. Possession of one, not the possession of the others, 172. Acknowledgment of right to redeem by one mortgagee, not to affect the others, 173. Acknowledgment to one of several mortgagors, is for the benefit of all, 173. Surrender to one, enures for the benefit of all, 678. Contra, where surrender is by act of law, *ib.* As to statement of consideration, in mortgage to, 452.
- Judgments*—act for the protection of purchasers against, 168. Have the effect of equitable mortgages, 147. Affect the entirety of lands, *ib.* Docket of, done away with, 168. Interest payable on, 148. Barred after 20 years, 174. Must be registered every five years, 149, 168, 689. On warrants of attorney, 688. *Forms*, of recital of, 22. Of assignment of, 270.
- Landlord and Tenant*—act for recovery of possession of tenements, 175. Tenant holding over, after notice by himself, 522. After notice by landlord, 519. Observations on notices to quit, 518, *et seq.* See *Distress*; *Lease*; *Lessee*.
- Lease*—observations on, 428. Must be in writing, if for more than three years, 403. Usual covenants in, 504. Difference between, and agreement for lease, 212, 216. Observations on agreements for, 215. On the right to assign, 207. On the covenant to repair, 405. What is a breach of covenant not to assign, 403. Rent reserved by is apportionable, 431. Observations on assignment of,

262. Effect of deposit of, 430. Stamps on, 660. Operative words in, 38. *Forms*, recital of, 33. Of licence to assign, *ib.* Reference to lease for a year, 38. Assignment of, 260. Of a house, 403. Under-lease of house with fixtures, 407. Of premises in mortgage, 411. A farm, 415. A house, 421. By husband and wife, 419. Conditions for, 421. *Habendums* in, 45. *Reddendums* in, 47. Covenants in, 103. *Provisoes* in, 79, *et seq.* Power to lease, 63.
- Leaseholds*—observations on assignment of, 262. Proper covenants in, 15. On the mortgage of, 459. Equitable mortgage of, 430. On the reassignment of, 604. *Forms*, conveyance of, 388. Mortgage of, 443. Covenants for title in assignment of, 94. See *Lease*.
- Legacy*—right to, barred after twenty years, 174. To attesting witness of a will, void, 182, 710. To husband or wife of attesting witness, 182. Of a debt to debtor liable to lapse, 693, 713. To issue of testator will not always lapse, 185, 714. Forfeited by death of legatee, 713. Of stock, observations on, 694. Vesting of, observations on, 714. On condition not to marry, 704. *Forms* of gift of, 693, 694. Assignment of, 276, 280.
- Lessee*—under a general power to determine a lease, the lessee has the right, 207. Liable to rent, though premises burnt down, *ib.* May assign if not expressly restrained, *ib.* Fire no excuse for not repairing, *ib.* Not liable to additional costs of lease, occasioned by a third party's concurrence, 205. Entitled to underlet, though restrained from assigning, 429. Becoming bankrupt, retains his lease, unless assignees elect to take, 431. Liable to an apportioned rent on termination of lease, 432. Shall not be protector, 155. See *Lease*; *Landlord and Tenant*.
- Lien*—attorneys have a lien for their costs, 300. And their representatives, 302. Extends to deeds, papers, and money, 301. Not to a will, 302. Mode of enforcing, 303. Affected by attorney retiring from a suit, 302. Extent of agent's lien, *ib.* In case of commissioners for taking the acknowledgment of married women, *ib.* Clerk in court, 303.
- Lights*—title to valid, after twenty years user, 177.
- Limitations, Statute of*—verbal acknowledgment will not take a debt out of the statute, 139. Indorsements of payments on account, not a proof of payment, *ib.* Effect of payment of interest, 139, 175. Land not to be recoverable after twenty years, 170. Ten years allowed for disabilities, 172. How remainders barred, 171. Mortgagor barred after twenty years, 170, 173, 464. Where parties have several estates in the same land, 172. Time allowed corporations sole, 173. In cases of fraud or trust, *ib.* As to advowsons, 174. Charges on land and legacies, barred after twenty years, 174, 288. Arrears of dower, rent, and interest, barred after six years, 175, 288. Right to take advantage of forfeiture barred after

- twenty years, 171. How administrator barred, *ib.* Act for limitation of actions relating to real property, 169.
- Lis pendens*—must be registered, to have validity against purchasers, 168. Statute for protection against, *ib.*
- Lodgings*—length of notice required before quitting, 521. Form of notice to quit, *ib.*
- Lunacy*—of a partner, not a dissolution of partnership, 572. Ground upon which the court of chancery will sometimes dissolve, *ib.* Of protector, lord chancellor acts as protector, 156, 595.
- Marriage*—is a revocation of a will, 183. Not of some testamentary appointments, *ib.* Of a woman, is a dissolution of partnership, 572. Observations on marriage settlements, 646. Forms of, 628.
- Merger*—observations on, 676. Some base fees will not merge, 157, 676. *Interesse termini* will not merge, 677. Of equitable estates, 676, 678. By operation of law, in case of joint tenants, *ib.* Surrender to one joint tenant, is a merger of the entirety, 678. Of estates held in different rights, 679. Estates tail do not merge, 676. Of one term in another, 258, 676.
- Modus*—see *Tithes*.
- Mortgage*—observations on, 456. Of copyholds, 459. Of leaseholds, *ib.* On covenants in, 458. Form of deed, *ib.* Of equitable mortgages of leaseholds, 430. Investigation of title on, 456. Foreclosure of, 462. Assignment of, 437, 463. Redemption of, 461, 464. Right to redeem barred after twenty years, 173. Deed must be prepared by mortgagee's solicitor, 456. Stamps on, 662. Where money advanced by several, 452, 459. Advantages of mortgagor's concurrence in transfers of, 437. By tenant in tail, 447 *π.* 448. Amount which trustees may lend, 466. Leases of premises in, 428. Reconveyance of, 462, 607. Schedule of deeds should be given with, 607. *Forms*, operative words, 38. Recitals of, 29. In conveyance, 374. In fee, 433. Of copyholds, 434. With short trusts for sale, 435, 451. Of leaseholds, 443. By tenant in tail, 446. By trustees of a term, and tenant for life, 448. By appointment, 449. To several persons, 451. Of personal estate, 454. Assignment of, 439. Ditto where further sum advanced, 437. By conversion of a mortgage for a term into a mortgage in fee, 441. Further charge, 444. By appointment, 455. Power of sale in, 55. Power of attorney, in assignment of, 58. Provisoes in, 72. Covenants in, 97.
- Mortgage-Money*—belongs to executor, 602. Right to, barred after twenty years, 174. Interest on, barred after six years, 175.
- Mortgagee*—extent to which he should investigate title, 456. May give notice to tenants to pay rent to him, 462. Should obtain possession of title-deeds, 460. Notices to be given by, *ib.* Duty as to outstanding terms, 258. Preparation of securities is the duty of

his solicitor, 456. Whether entitled to six months' notice before being paid off, 461 and *Addenda*. If trustee, what proportion he may advance, 466. Entitled to a lien for costs, 665. On his right to receive interest in advance instead of notice, 461. *Forms*, notice by mortgagee calling in money, 515. To tenant to pay rent, *ib*. From second to first mortgagee, 516.

*Mortgagor*—whether entitled to notice to pay in mortgage-money, 461. Ought to obtain reconveyance on discharge of mortgage-money, 462. Effect of his concurrence in transfers, 463, 667. Debarred of right to redeem after twenty years, 173. Not bound by mortgagee's leases, 428. Covenants of do not run with the land, 429. Forms of notices by, 515.

*Notarial Forms*—certificate of the execution of letter of attorney, 467. Of identity of persons, *ib*. Of baptism, 468. Of duplicate protest, *ib*. Of signature of chief magistrate, *ib*. Of an account, *ib*. Of signature to a policy, 469. Of merchants to notary's signature, *ib*. Of damage of goods by sea-water, 470. Ditto, and of remission of duties, *ib*. Of registry of a ship, 505. Letters of attorney, 471. To manage affairs in the West Indies, *ib*. To receive money arising from the cargo of a ship stranded, 474. Protests, entry of, 475. Against the seas, *ib*. Of ship being destroyed by fire, 476. Of ship being taken, 480. Of demurrage, 483. For refusing to sign a bill of lading, 484. For breach of charter-party, 486. Of abandonment of ship, 487. Against underwriters for non-payment of insurance, *ib*. For not executing charter-party, 490. Of bills of exchange, 490-494. Of delivering copy of protest, 487. Shipping Forms—charter-party, 494, 495. Between part owners of a ship, 498. Condition of bottomry bond, 502. Respondentia bond, 503. Bill of sale of a ship, 504. Act of honour, 491, 493.

*Notary*—observations on the office and duties of, 508. Admission of, 509. Entitled to administer oaths, 671.

*Notice*—purchaser affected by notice of incumbrance, 259. Of incumbrance on shares in company should be given to the company, 287. Of purchase on charges should be given to trustees of property charged, *ib*. Advantage of notice of charges, 286. *Forms*, of dissolution of partnership, 513. Of intention to dissolve, *ib*. After dissolution to debtors of partnership, 514. To executors of assignment of a legacy, *ib*. From purchaser to vendor, that purchase money is producing no interest, *ib*. From purchaser of equity of redemption to mortgagee, *ib*. To mortgagor of assignment of mortgage, 515. To mortgagee of intention to pay off mortgage, *ib*. From mortgagee calling in mortgage, *ib*. To a tenant to pay rents to him, *ib*. Ditto from receiver, 516. From a second to a first mortgagee, *ib*. Of application to justice to procure possession of a tenement, 517. Of action against a magistrate, *ib*. Against an excise or custom-house officer, 518. From la



lord to tenant to quit, *ib.* Ditto, where commencement of tenancy is uncertain, 519. Ditto, or pay double rent, *ib.* From tenant to landlord of intention to quit, 520. In case of lodgings, 521. Of intention to determine a lease, *ib.* To tenant to repair premises, 522. Of appeal against a poor-rate, *ib.* Of trying a traverse upon a presentment of a road being out of repair, 524. Of motion to withdraw a presentment, *ib.* Against sporting, 526. Of appeal against an order of removal, *ib.* Of assignment of a chose in action, 527. Of meeting to consent to sale of parish property, 536. To auctioneer of appointment of reserved bidder, 351. By reserved bidder to auctioneer, *ib.* See *Mortgage; Landlord and Tenant.*

*Oaths*—act for abolishing voluntary and extrajudicial oaths, 671. Statutory declaration substituted, *ib.* *Forms*, of appraiser's oath, 399. To answer in chancery, 232.

*Operative Words*—forms of in deeds, 37, 38.

*Orders*—of certain courts have effect of judgment, 148. Of judge operates as a distringas on stock, 148.

*Parcels*—forms of description of, 39. In recitals, when to be set out fully, 12. As to identity of, 13.

*Parish Property*—statutes relating to, 528. Churchwardens, &c., are a corporation for the purpose of holding, *ib.* Mode of selling, 529, *et seq.* Preliminary forms for sale of, 532. Conditions for the sale of, 539. Conveyance of, if freehold or leasehold, 541. If copyhold, 544.

*Partners*—liability and duty of retiring partner, 567, 573. Of dormant partner, 569. Of nominal partner, *ib.* Not liable to persons who knew his want of interest, 570. Release to one operates for benefit of all, 623. Release by one estops all, *ib.* What agreements implied by law between partners, 570. Extent to which one partner may bind the other, 571. Bankruptcy works a dissolution, 572. Lunacy of a partner, not a dissolution of itself, *ib.* Jurisdiction of a court of equity over partners, 573. Professional men may continue their practice after dissolution, 574. Application of payments to one partner after dissolution, *ib.* Marriage of female partner is a dissolution, 572.

*Partnership*—observations on, 568. How dissolved, 571. Suggestions on dissolution of, 572. On preparation of articles, 568. *Forms*, articles of partnership between solicitors, 550. Traders, 554. Applicable to all partnerships, 557. Admission of a new partner, 563. Dissolution of, 565.

*Payments*—by a debtor who is indebted on two accounts, application of, 133. To partners after dissolution, 574. Of interest, takes debt out of the statute of limitation, 139. Memorandum of by party receiving, not proof of payment to take a case out of the statute, 139.

*Poor-Rate*—notice of appeal against, 522.

*Possessio Fratris*—the old doctrine of, abolished, 172.

*Possession of Tenements*—act for the recovery of in certain cases, 175.

May be recovered by two magistrates in certain cases, 176. Notice of intention to apply to magistrates, 517.

*Powers*—of sale in a mortgage, observations on, 457. General devise operates as an execution of, when, 184, 712. Of appointment by will, how executed, 182, 712. Proper in conveyances in trust for sale, 647. Attestation of appointment under, 5. When to be set out fully in abstract, 121. *Forms*, of sale in a mortgage, 55. To give receipts, 57, 58. Of revocation of trusts of money, 59. Of jointuring, in a will, 60. To vary securities, 61. For maintenance, 634. Of advancement, 62. To lease, 63. Of revocation and new appointment, 64. Of sale, exchange, and partition, 65. To invest money arising under, 67. To appoint new trustees in a will, 70. In a settlement, 69. In a mortgage, 453. To compound debts, 71. For articulated clerk to serve last year with conveyancer or agent, 295. For lessor to enter and see state of repairs, &c., 405, 409. In a lease, for lessor to plant, &c., 43. To determine a lease, 79. Of appointment amongst children, 53, 633. Of appointment by will, by feme covert, 636. Of appointment of uses, 52. See *Provisoes*; *Appointments*.

*Powers of Attorney*—observations on, 587. Revocation of, what amounts to, *ib.* Infants and married women may act under, *ib.* When several jointly appointed, 589. Should form part of an assignment of any chose in action, 286. Extent of attorney's powers, 587, *et seq.* Is not revocable, if given for valuable consideration, 287. Proper in transfers of mortgages, 437. Directions as to powers to be used in India, 589. In the United States, 590. To deliver seisen may be given to persons not parties to the deed, 588. If included in feoffment, a further stamp necessary, 660. Stamps on, 661. *Forms*, to deliver and receive seisen, 359. In assignment of mortgage, 58. Of dividends under a fiat, 274. Of a legacy, 280. Of a policy, 282, 284. Of a legacy of stock, 278. To settle affairs, and receive debts on dissolution of partnership, 566. To manage affairs in India, 471. To prosecute an action in America, 575. To distrain for rent, 579. To receive a legacy, 581. To take admission of copyholds and surrender, 582. To receive a share of intestate's estate, 584. To demand rent, and enter in default of payment, 585. To vote in the choice of assignees, *ib.* Affidavit of the execution of, 578, 586. Notary's certificate of the execution of, 467.

*Professional Communications*—must not be disclosed, 305. Rule applies to counsel, solicitors, and proctors, 307. Not to medical men or others, *ib.* Clerks, agents, or interpreters, 309. Communications from third persons must be disclosed, 310. Client only may waive the privilege, 306. If party to a fraud, attorney must dis-

close it, 309. Letters between to defendants, not privileged, 307. Attorney must disclose what he does, 5, 309. Principle of the rule, 306. As to privileged papers in the hands of attorney's representatives, 309. Witness demurring to answer questions, must pay costs if demurrer overruled, 305.

*Protector of a Settlement*—creation of office of, 155. What estates give the right to be, 155, 593. When married woman shall be, 155. Lessee shall not be, *ib.* Appointee may be, 596. When trustees shall be, 155, 156, 593. May be appointed by settlor, 156. If infant, the court of chancery will be, 156, 595. If lunatic, the lord chancellor, &c., will be, *ib.* Not liable to any control, 157. Agreements by to withhold consent, void, *ib.* His consent must be enrolled, 158. His consent necessary to barring remainder, 157. Issue may be barred without his consent, 157. Consent must be before or cotemporaneous with conveyance, 158. Observations on the office of, 591. Tables illustrating the rules, 592. Suggestions as to mode of assenting in case of mortgages, 448. On marriage settlements, 647. *Forms*, of conveyance with his assent, 384. Of mortgages with, 448. Of proviso saving protector's rights, 385. 4

*Protests*—see *Notarial Forms*.

*Provisoes*—*Forms*, for redemption in a mortgage, 72. For enjoyment by mortgagor till default, *ib.* For redemption in a mortgage to bankers for a floating balance, 73. For renewal in a mortgage of leaseholds, 75. For taking a reduced rate of interest on punctual payment, 76. For discharge from covenant, for production of title-deeds, on procuring other covenants, 77. For indemnifying trustees, 236, 77. To make void devises to persons disputing will, 78. To avoid forfeiture in conveyance of freeholds and copyholds, 79. To determine a lease, 79, 414 *n.* For re-entry on non-payment of rent, and no sufficient distress, 80. On non-performance of the covenants, &c., in a lease, 81. For cessor of a term, 83. For the repurchase of an annuity, *ib.* For determining annuity on bankruptcy or alienation, 696. For re-entry in an exchange, 367. For making void a release of right of way, 616 *n.* For bringing appointed shares into hotchpot, 634. For indemnity of mortgagor from acts of receiver, 243. In release of part of lands charged, saving rights upon the remainder, 379. In disentailing deeds, saving the rights and powers of protector, 385.

*Purchaser*—observations on agreements for purchase, 202. Of copyholds, must bear expense of surrender and admission, 205. Must pay costs of conveyance, *ib.* And of assignment of attendant terms, *ib.* And of examining abstract, 204. Entitled to deeds or covenant for production, 206. Not obliged to accept conveyance or surrender by attorney, 205. To what length of title entitled, 118. Not bound by recitals in deeds, 204. Cannot be compelled to take an equitable estate, 205. Of leaseholds entitled to lessor's title,

204. Exception where a bishop is lessor, 205. Not entitled to production of original wills, 204. Entitled to costs, if vendor cannot make out a title, 206. From married man should make inquiries as to settlement, 457. Becoming bankrupt, contract may be abandoned, 206. What covenants entitled to, 14. Must indemnify vendor from charges on land purchased, 15. Act for protection of purchasers against judgments, &c. 168. Not affected by unregistered judgments, 168. From bankrupt, 169, 142. Takes free from dower of women married since 1833, 150. Attorney's liability to for accepting title, 122. Must pay occupation rent, if purchase set aside for fraud, 133. Duties of on a purchase, 203. Entitled to have incumbrances removed by vendor, 205. Should take an assignment of terms, 259. Advantage of above a declaration of trust, *ib.* How affected by notice, *ib.* Precautions to be observed on purchase of choses in action, 287. Of choses in action, not generally entitled to specific performance of agreement, 289. See *Agreement; Conveyance; Conditions of Sale; Vendor.*

*Rate*—see *Poor-Rate.*

*Receipts*—effect of receipt in the body of a deed, 597. Presumption arising from a receipt, 598. Forms of, 597.

*Recitals*—object of, 11. What necessary to be recited, *ib.* In reconveyances by trustees, &c. 11, 604. When premises should be described in, 12. Effect of in a release, 622. *Forms*, of account stated, debt upon, 21. Act of parliament, 18. Action at law, 19. Administration, *ib.* Agreement for purchase, *ib.* By mortgagee to discharge part of the premises from the mortgage debt, 20. For mortgage, 26. For assignment for benefit of creditors, 29. For surrender of a term, 674. For marriage, 629. For settlement, *ib.* By father to pay an annual sum to trustees, *ib.* To accept payment of mortgage debt and surrender a term, 673. For receiver to secure mortgage money, 241. For assignment of a term, 253, 255. To release dower, 378. Appraisement of goods, 20. Apprenticeship, 249, 27. In arbitration bond, 324. Assignment of a term, 24, 28. Goods, 27. Divers mesne assignments, 32. Attorney, letter of, 33. As to awards, 314, 324. Bond, 21. For arbitration, 311, 313. Conveyance to uses to bar dower, 34. Covenant for the production of title-deeds, 28. Court rolls, 35. Enlargement of time to make award, 314. Extent, 20. Feoffment, 32. Fine, deed to lead the uses of, 34. Judgments, 22. Lease and release, 32. Leases, 33. Licence, to assign a lease, *ib.* Mortgage in fee, 29. By demise, 30. Of leaseholds, 31. Assignment of, 30. Of amount due on mortgage, 599. Order of reference at *Nisi Prius*, 315. Policy of assurance, 23. Probate, 26. Recovery deed, 34. Release grounded on lease, *ib.* Sale by auction, 27. Seisen of lands, 25. Wills, 26. Warrant of attorney, 24, 25. Writ to sheriff, 22. Warrant of sheriff, 23.

**Reconveyances**—observations on, 603. Proper recitals in, 11, 16, 604. Proper covenants in, 604. Directions as to leaseholds, *ib.* As to copyholds, 607. Right to legal advice before executing, 605. By infant trustees, 606. Whether cestueque trusts must be parties to, 607. Description of parcels in, 604. Cautions to be observed on, 607. Redelivery of deeds should be obtained, *ib.* Persons appointed trustees or executors, not intending to act, should disclaim, not reconvey, 606. *Forms*, from mortgagee to mortgagor, 599. Of the legal estate, 600. From heir of mortgagee, 601. From heir and executor of mortgagee to devisees in trust of mortgagor, 602.

**Reddendum**—description of, 8. Reservation must be to the grantor, *ib.* Exception to the rule, *ib.* *Forms*, in lease, 47, 416. In a lease granted under a power, 48. Of additional rent for sowing flax, ploughing, pasture, &c., 48, 416. In a lease by tenant in tail, 50. By husband of wife's lands, *ib.*

**Register**—agreements as to boundaries of church property must be deposited in bishop's registry, 143. Judgments, decrees *lis pendens*, &c., must be registered, 168. Of judgments instead of docketting, *ib.* Quietus to crown debtors must be registered, 169. *Forms*, certificate of examination of register of baptisms, 468. Of register of a ship, 505.

**Release**—observations on, 621. Effect of recitals in, 622. How far covenant not to sue operates as a release, 623. Must be under seal, 624, 132. Set aside if obtained by fraud, 625. Executed in ignorance, *ib.* Of one debtor is a release of all, 623. By one creditor operates as a release by all, 622. Effect of release of all demands, 627. *Forms*, operative words in, 38, 627. Recital of, 34. General release, 609. Of right in land, 610. Of legacies charged on land, 611. From younger child on receipt of portion under a settlement, 611 *n.* Of right of way, 614. To debtor from creditors on a composition, 616. From creditors to a bankrupt, 618. Of equity of redemption, *ib.* To executor by residuary legatee, 620. Of trustees in appointment of trust-fund, 235.

**Remainder and Reversion**—barred after twenty years from time of becoming an estate in possession, 171. In case of forfeiture of preceding estate, reversioner has two rights, *ib.* When right of entry shall be deemed to have accrued, *ib.* When subject to a tenancy at will, or from year to year, *ib.* Barred by bar to preceding estate tail, 172. How barred when a previous estate is vested in same person as the remainder, 172. Effect of remainder-man subjecting his remainder to mortgage on life estate, 664. Effect of union with a base fee, 676. Contingent remainder cannot be conveyed, 362 *n.* May be devised, 181. *Forms*, grant of, 361. Ditto, being a disentailing deed, 384.

**Removal, Order of**—appeal against, 526.

**Rent**—apportionment of, 141, 431. Right to barred after twenty

- years, 170. Arrears of barred after six years, 175. Receipt of rent payable by lessee is equivalent to receipt of profits under the limitation acts, 174. Distress for, 398. May be reserved generally without naming the party to whom payable, 404. Forms of reservation of, 47.
- Respondentia Bond*—form of condition in, 503.
- Resulting Estate*—confers a right to be protector, 155, 596.
- Reversion*—definition of, 361. Mode of conveying, *ib.* Owner of is not considered assignee of an estate which merges in it, 429 *n.* See *Remainder*.
- Rights*—of party out of possession extinguished, when barred, 174. Not assignable at law, 13, 286. Are devisable by will, 181. When deemed to have accrued, 170. Not preserved by continual claim, 172. Effect of acknowledgment of right, 175.
- Securities*—may be taken in execution, 148. Sheriff may sue on them, *ib.* Must be relinquished if debtor's person taken in execution, *ib.* To secure future costs to attorneys, are void, 273.
- Seisen, Livery of*—mode of delivery of, 358. Power of attorney to deliver may be to persons not parties to the deed, 588.
- Settlement*—definition of, in fines and recoveries act, 152, 591. Appointment considered part of, 152, 596. On marriage, observations on, 646. Of real and personal estate should be by different deeds, 647. Of small real estates, 646. How bankruptcy may be provided against in, 647. Lady's separate estate, 649. Directions to trustees of, 650. As to lending trust money, 466. Stamps on, see *Addenda*. Forms, of personal estate of gentleman and lady, 628. Of real estate, 641. On trusts for sale, 640. Trusts for gentleman till bankruptcy or alienation, 643. Trusts for renewal, &c., of leaseholds, 644.
- Ship*—see *Notarial Forms*.
- Solicitor*—see *Attorney*.
- Specific Performance*—of agreements for purchase of choses in action, when enforced, 289.
- Stamps*—on agreements, 653. Annuity deeds, 654. Memorial of, 661. Provision for insurance of lives in annuity deed, 666. Appointment in execution of a power, 654. Of a gamekeeper, *ib.* Guardian, 236 *n.* Apprenticeship, 654. In case of parish or charity apprentices, 655. Award, *ib.* Assignment of mortgage, 439, 667. Bargain and sale, 655. Bonds, 656. Character-party, 657. Cognovit, 670. Conveyance on a sale, 657. Where property conveyed by different instruments, 658. To a sub-purchaser, 659. Where different purchases conveyed by one deed, *ib.* Where there is a charge on the land, *ib.* Duplicates of, 660. Where deed contains other matter than the conveyance, *ib.* Of equity of redemption in mortgage deed, 669. Declaration of trust, 660. Deed, *ib.* Exchange, *ib.* Feoffment, *ib.*

- Lease at a fine, ib.* *Lease without fine, 661.* *With fine and rent above L.20, ib.* *Counterpart of, ib.* *Lease for a year, 655.* *Not liable to progressive duty, 656.* *Letter of attorney, 661.* *In deed of feoffment, 660.* *Letter of licence, 661.* *Memorial of grant of annuity, ib.* *Mortgages, 662.* *To secure stock, 663.* *To secure money and stock, ib.* *Where mortgage money is made payable to several mortgagees in distinct proportions, 452, 663.* *Suggestions on this head, 459.* *Of copyholds, 663.* *Deed for further assurance of property mortgaged, ib.* *Deed of further security, 664.* *Stipulation as to mortgagee's costs does not affect the stamp, 665.* *Ditto as to insurance of premises, 666.* *Contra, as to money to be laid out in improvements or insuring mortgagor's life, 665.* *If amount to be secured is not limited by the deed, L. 25 stamp is chargeable, 666.* *Transfer of a mortgage, 667.* *Effect of fresh covenant for payment in, 439, 667.* *Effect of conversion of mortgage by demise into mortgage in fee, 668.* *Agreement that interest should be converted into principal, requires fresh stamp, ib.* *With conveyance of equity of redemption in the same deed, 669.* *With any other matter, ib.* *Notarial act, ib.* *Partition, see Exchange; Power of Attorney, see Letter of Attorney.* *Principal deed in conveyance, 669.* *Protest, 669.* *Release, ib.* *Revocation, ib.* *Surrender, ib.* *Warrants of attorney, 670.* *Exemptions, ib.*
- Statute of Frauds*—extracts from, 138. *Lord Tenterden's act, (9th Geo. IV.) 139.*
- Statutes*—see *Acts of Parliament, and Lists of Statutes cited.*
- Statutory Declarations*—substituted for voluntary oaths, 670. *Fees for taking, ib.* *Form of, 672.*
- Stock, Government*—made subject to judgments, 148. *Charged by judge's order upon, ib.*
- Suit in Equity*—barred by lapse of time, as action at law, 173. *Purchasers without express notice of, not bound, unless registered in the common pleas, 168.* *For foreclosure, 462.*
- Surrender*—observations on, 675. *Requisitions to validity of, ib.* *If defective, may operate as a conveyance, 676.* *Need not be by deed, ib.* *Effect of, to one joint tenant, 679.* *Stamps on, 669.* *Forms, operative words in, 38, 679.* *Of a life estate, 380.* *Of a term created for securing legacies, 611.* *Of a mortgage term, 673.* *By indorsement, 674.*
- Tenant in Common*—possession of one, is not the possession of the other, 172. *Acknowledgment by one mortgagee tenant in common, not to affect the rights of the other, 173.* *Acknowledgment to one mortgagor will avail for his tenant in common, ib.* *Is protector of a divided share, 155, 594.*
- Tenant by the Curtesy*—is protector of the estate tail, 155, 593, 596.
- Tenant pur autre Vie*—is protector of a settlement, 593. *Estate of, will merge in estate for life, 676.* *And in another estate pur*

- autre vie*, *ib.* Purchaser from tenant for life, becomes tenant *pur autre vie*, *ib.*
- Tenant for Life**—is protector of a settlement, 593. Suggestions on the purchase of preceding estate for life, 676. Will not merge in an estate *pur autre vie*, *ib.* Form of surrender of, 380.
- Tenant in Tail**—meaning of, in fines and recoveries act, 151. May create a base fee by deed enrolled, 154, 157. May bar the remainder with protector's consent, 157. Or when there is no protector, 592. *Ex provisione viri*, power of, 154. After possibility of issue extinct, cannot bar the entail, *ib.* Under 34th and 35th Hen. VIII. cannot bar entail, *ib.* Issue of, cannot bar their expectancies, *ib.* Effect of mortgage, or limited disposition by, *ib.* If bankrupt, powers of commissioners, 160. Of copyholds may bar entail, 159. Of money to be laid out in land, 163. Bar of, is a bar to remainders, 172. Suggestions on mortgages by, 448. On their marriage, 647. *Forms*, of mortgage by, 446. Conveyance by, 384. See *Estate Tail*; *Protector*.
- Terms of Years**—observations on assignments of, 257, 390. Objections against declaration of trust of, 259. *Interesse termini*, 677. Tenant for, if determinable on lives, is protector of a settlement, 593. Merger of, 258, 676. One term will merge in another, 676. Difference between a reversionary term and a term of the reversion, 677. In *autre droit* will not merge, 679. When it will merge in a freehold, in *autre droit*, *ib.* In whom it vests on death of executors, 262. See *Assignment*; *Lease*; *Surrender*; *Merger*.
- Tithes**—act for shortening the time in claims of a modus, or exemption from tithes, 179. Length of time necessary for establishing exemption from, or a modus, *ib.* Time during which lands shall be held by persons entitled to tithes, exempted from the time, 180. Pass by general words, 390. Form of grant of, 361.
- Title**—observations on a forty years' title, 118, 389. Attorney's liability in accepting, 122. Purchaser from lessee, generally entitled to production of lessor's title, 204. Must be made out by vendor at his own expense, 203–205. Expense of investigating, when purchase abandoned for defect of, must be borne by vendor, 206. Covenants for, in a conveyance, 14. In a mortgage, 458. Should be investigated before a sale, 117. Abstracts of, *ib.* See *Abstracts of Title*.
- Trade**—validity of agreement in restraint of, 549, 555 *n.* Form of articles of partnership, 554. Liability of dormant and nominal partners in, 569. See *Partnership*.
- Trust**—how barred, 173. Observations on trusts for separate use of feme covert, 648, 649. For providing against bankruptcy, 647. Declaration of, stamp on, 660. *Forms*, for sale of real estate, 54, 640. For conversion of personalty, 54. For investment, 54, 630. To pay interest to tenant for life, 55. For the separate use of a married woman, 55, 632. For children according to ap-



pointment, 633. In default of appointment, *ib.* For maintenance and education of children, 634. For advancement of sons, 62. Of lady's property in default of children, in a settlement, 636. For gentleman, till bankruptcy or alienation, 643. For renewal, &c., of leaseholds, 644. To reconvey on payment of mortgage money, 435. For sale in a mortgage, 436. Of attendant terms, 254. Ditto in a mortgage, 442. In a receiver deed, on a mortgage, 242. In assignment of choses in action, to secure costs, 275. Declaration of, by a person in whose name an estate was purchased, 392. Of mortgage money by mortgagee, to those interested with him in the money, 393. Of money lent on mortgage by trustees, 395.

**Trustees**—not bound to covenant beyond their own acts, 16, 371. Limitation to trustees to support contingent remainders, 50. Limitation of a term to trustees, 53. Bare trustee not to be protector of a settlement, 155. Devise to trustees, 185. Cestueque trusts may use their name to tax a bill, 305. Rule as to amount they may lend on mortgage, 466. Release to, in appointment of trust fund, 235. Liable for misrepresentations as to charges on trust fund, 287. Entitled to be indemnified, through no indemnity clause authorizing it, 643. Duty of, under marriage settlement, 650. Entitled to legal advice, before executing a reconveyance, 605. Estates of, liable to merger, 679. Conveyance from infant trustees, 606. See *Powers*; *Provisoes*.

**Uses**—in bargain and sale, can only be limited to the bargainee, 365. Conveyances under the statute of, require a consideration, 2. *Forms*, limitation in fee, 50. To joint tenants, *ib.* Tenants in common, *ib.* To prevent dower attaching, 52. In tail, 50, 51. For life, 50, 642. To trustees to support contingent remainders, 50. According to appointment, 52, 53. Of a term to trustees, 53. To daughters, as tenants in common in tail, 51.

**Vendor**—must pay expense of executing conveyance, 205. Must free the premises from incumbrances, *ib.* May not merge terms without purchaser's consent after contract for sale, *ib.* What covenants for title he must give, 14. Is bound to show the lessor's title, 197, 204. Where title bad, must pay expense of investigating it, 206. Must produce title-deeds at his own expense, 204. Must pay additional expense of conveyance occasioned by the concurrence of third parties, 205. See *Purchaser*.

**Vesting**—suggestions as to proper times for vesting interests in settlements, 649. Observations on vesting of legacies, 714.

**Warrants of Attorney**—must be attested by the debtor's attorney, 146, 686. Observations on the execution of, *ib.* Who may object to informal execution, 687. By attorney, need not be attested by another, *ib.*

Observations on signing judgments on, 688. Defeasance of, must be by deed if not annexed, 681. Effect of bankruptcy on, 688, 689. Insolvency on, 691. Judgments on must be registered in the common pleas, 689. Insolvent debtor must execute a warrant of attorney before his discharge, 691. Of infant, is void, *ib.* *Forms*, 680. Defeasance of to secure money, 681. To secure an annuity, 683. In ejectment, 684.

*Watercourse*—twenty years' use gives title to, 177.

*Way, Right of*—what length of use gives title to, 177. *Forms*, Release of, 614. Grant, 615.

*Wills*—1st Vict. c. 26, 180. Observations on, 709. Execution of, 182, 716. Publication not necessary, 182. No form of attestation of necessary, 710. Revocation of, 183, 716. Not revoked by presumption, 183. Of sailors and soldiers, 182. Revoked by marriage, 183, 718. Infants cannot make a will, 182, 711. Executors and creditors are good witnesses to prove validity of, 183, 710. Legatee attesting, forfeits his legacy, 182, 710. Legacy to husbands or wife of attesting witness, void, *ib.* Effect of legatee attesting a codicil, 710. Speaks from testator's death, 184. No distinction between wills of real and personal estate, 710, 711. Not invalid from incompetency of attesting witnesses, 710. Fee may pass by, without words of limitation, 184, 711. Execution of appointment by, 182, 712. On what real estates a will operates, 712. Alteration in a will must be attested, *ib.* *Forms*, commencement of, 692. Appointment of executors, *ib.* Guardians, *ib.* Directions as to debts, *ib.* Legacy of furniture, 693. Wearing apparel, *ib.* Farming stock, *ib.* Of a debt, *ib.* Stock, *ib.* Stock in trade, 696. Devise on trusts for sale, 697. Direction for trustees to invest money, *ib.* Devise in fee simple, 698. Attestation of, *ib.* Devise to an infant, *ib.* Appointment by will, 699. Will of freehold and personal estate, 699, 702. Short form, of personalty, 708. Codicil, 709.

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